

Carlos A. Larrauri

9818 SW 94th Terrace, Miami, FL 33176
(305) 510-9196 • larrauri@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL	Ann Arbor, MI
HARVARD KENNEDY SCHOOL OF GOVERNMENT	Cambridge, MA
Concurrent Juris Doctor/Master in Public Administration	May 2024
Journal: <i>Michigan Law Review</i> , Senior Editor, Vol. 122	
Honors: Zuckerman Fellowship, Harvard's Center for Public Leadership (full tuition & stipend for one year)	
Dean's Scholarship, University of Michigan (\$60,000)	
Activities: Research Assistant for Prof. Gabriel Mendlow (researching coercion in mental healthcare)	
1L Representative for the Latinx Law Students Association	

UNIVERSITY OF MIAMI SCHOOL OF NURSING AND HEALTH STUDIES	Coral Gables, FL
Master of Science in Nursing	August 2017
Honors: Sigma Theta Tau International Honor Society of Nursing	
Award: The 2017 Community Engagement Award	

MIAMI DADE COLLEGE BENJAMÍN LEÓN SCHOOL OF NURSING	Miami, FL
Bachelor of Science in Nursing	July 2016
Honors: Benjamin Leon Scholarship (full tuition)	

NEW COLLEGE OF FLORIDA (THE HONORS COLLEGE)	Sarasota, FL
Bachelor of Arts in Humanities	April 2011
Honors: Florida Academic Scholars Award (full tuition)	

EXPERIENCE

SIDLEY AUSTIN, LLP	New York City, NY & Washington D.C.
<i>Summer Associate 2L Diversity & Inclusion Fellow</i>	May 2022 – July 2022; May 2023 – July 2023
<ul style="list-style-type: none"> Drafted an 18-page memo analyzing federal case law interpreting the statutory provisions and implementing regulations of FDA's three-year exclusivity for new clinical investigations. Conducted legal research on capital litigation, social security disability, and police misconduct matters. 	

THE UNIVERSITY OF MICHIGAN COLLEGE OF LITERATURE, SCIENCE, AND THE ARTS	Ann Arbor, MI
<i>Graduate Student Instructor for the Global Scholars Program</i>	August 2022 – May 2023
<ul style="list-style-type: none"> Delivered a lecture to 70+ students on a "Rights-based Approach to Mental Health" in the Fall of 2022. Co-led check-ins with student leaders, provided guidance on facilitating student groups, and delivered feedback on essays and other written assignments. 	

THE UNIVERSITY OF MICHIGAN PEDIATRIC ADVOCACY CLINIC	Ann Arbor, MI
<i>Student Attorney 1L Goodwin Diversity Fellow</i>	May 2021 – August 2021
<ul style="list-style-type: none"> Worked on an interdisciplinary team with physicians as a medical-legal partnership to provide relief for legal issues linked to children's medical and social problems, including housing, education, and public benefits. Conducted legal research on family law, interviewed clients, and cross-examined a witness at trial. 	

UNIVERSITY OF MIAMI SCHOOL OF NURSING AND HEALTH STUDIES	Coral Gables, FL
<i>Lecturer, Psychiatric Nursing</i>	August 2018 – May 2020
<ul style="list-style-type: none"> Trained seven accelerated BSN students per semester on the fundamentals of psychiatric nursing in community mental health and inpatient psychiatric facilities. Graded and delivered feedback on essays and other written assignments. 	

CARLOS A. LARRAURI, LLC	Miami, FL
<i>Clinical Director & Advanced Practice Registered Nurse</i>	November 2017 – August 2023
<ul style="list-style-type: none"> Diagnosed, prescribed, and evaluated treatment response for fifteen to twenty-five patients per week in a community mental health center in Washington State (via telepsychiatry). 	

C. Larrauri

- Supervised staff and patient care at four community mental health centers in South Florida and ensured compliance with applicable laws, rules, and regulations.

IMIC MEDICAL RESEARCH CENTER

Sub-Investigator

Palmetto Bay, FL

April 2018 – August 2018

- Conducted clinical research for over twelve successful phase II, III, and IV drug trials.
- Ensured study compliance with regulations, guidelines, and standard operating procedures.

CORRECT CARE RECOVERY SOLUTIONS

Psychiatric Registered Nurse

Homestead, FL

November 2015 – April 2016

- Administered medications, evaluated psychiatric and medical progress, and recorded patient data for up to twenty-five patients daily at a maximum-security forensic psychiatric hospital.
- Directed support staff, including a team of three mental health technicians.

SELECTED SCHOLARSHIP

- Fusar-Poli, P., Sunkel, C., **Larrauri, C. A.**, Keri, P., McGorry, P. D., Thornicroft, G., & Patel, V. (2023). Violence and schizophrenia: the role of social determinants of health and the need for early intervention. *World psychiatry*, 22(2), 230–231. <https://doi.org/10.1002/wps.21074>.
- Brady, L. S., **Larrauri, C. A.**, & AMP SCZ Steering Committee (2023). Accelerating Medicines Partnership® Schizophrenia (AMP® SCZ): developing tools to enable early intervention in the psychosis high risk state. *World Psychiatry*, 22(1), 42–43. <https://doi.org/10.1002/wps.21038>.
- **C.A. Larrauri** & C. Garret. First-person accounts of advocacy work. In: Intervening Early in Psychosis – a team approach, edited by K.V. Hardy, J.S. Ballon, D.L. Noordsy, and S. Adelsheim. Washington DC: American Psychiatric Association Publishing, 2019.

SELECTED SERVICE AND LEADERSHIP

FOUNDATION FOR THE NATIONAL INSTITUTES OF HEALTH

Bethesda, MD

Steering Committee Co-Chair for the Accelerated Medicines Partnership program in Schizophrenia

October 2020 – Present

- Co-leading a \$100 million public-private partnership to develop more effective medicines by defining and maintaining the research plan, reviewing the project's progress, and providing an assessment of milestones.

NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE

Washington D.C.

Planning Committee for Novel Molecular Targets for Mood Disorders and Psychosis

November 2020 – March 2021

- Planned a virtual workshop by developing the workshop's agenda, selecting, and inviting speakers and discussants, and assisting in moderating the discussions.

THE BROAD INSTITUTE OF MIT AND HARVARD

Cambridge, MA

Schizophrenia Spectrum Biomarkers Consortium Ethics Workgroup

November 2019 – Present

- Developing participant education materials and creating patient and family surveys to enhance patient engagement and outreach for the biomarkers study.

NATIONAL ALLIANCE ON MENTAL ILLNESS

Arlington, VA

Board of Directors, Former Secretary & Chair of Board Policy and Governance

July 2017 – June 2023

- Recorded and preserved minutes and reviewed agendas for executive committee meetings.
- Served on strategic planning, governance, and policy committees, and workgroup on diversity and inclusion.

ADDITIONAL

Languages: Spanish (professional working proficiency in reading, writing, and speaking)

Programming Skills: STATA (intermediate proficiency) and R (beginner proficiency)

Public Speaking: Harvard Law School, Harvard Business School, Stanford, UCSF, National Academies

Interests: Composing original music, traveling, cooking, genealogy, financial investing, and weightlifting

Control No: E196661401

Issue Date: 05/30/2023

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Larrauri, Carlos Alberto

Student#: 86798752



Paul R. Larson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
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Fall 2020 (August 31, 2020 To December 14, 2020)

LAW	510	001	Civil Procedure	Maureen Carroll	4.00	4.00	4.00	B+
LAW	520	005	Contracts	Albert Choi	4.00	4.00	4.00	B+
LAW	580	008	Torts	Kyle Logue	4.00	4.00	4.00	B+
LAW	593	001	Legal Practice Skills I	Margaret Hannon	2.00		2.00	S
LAW	598	001	Legal Pract: Writing & Analysis	Margaret Hannon	1.00		1.00	S

Term Total GPA: 3.300 15.00 12.00 15.00

Cumulative Total GPA: 3.300 12.00 15.00

Winter 2021 (January 19, 2021 To May 06, 2021)

LAW	530	001	Criminal Law	Gabe Mendlow	4.00	4.00	4.00	B+
LAW	540	003	Introduction to Constitutional Law	Richard Primus	4.00	4.00	4.00	B
LAW	594	001	Legal Practice Skills II	Margaret Hannon	2.00		2.00	S
LAW	673	001	Family Law	Maude Myers	3.00	3.00	3.00	B+
LAW	898	001	Law and Psychiatry Crossroads	Debra Pinals	2.00	2.00	2.00	A+

Term Total GPA: 3.361 15.00 13.00 15.00

Cumulative Total GPA: 3.332 25.00 30.00

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Control No: E196661401

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Larrauri, Carlos Alberto
Student#: 86798752



Paul R. Larson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Grade
Fall 2022 (August 29, 2022 To December 16, 2022)								
LAW	448	001	Business Planning	Stefan Tucker	2.00	2.00	2.00	A
LAW	781	001	FDA Law	Ralph Hall	3.00	3.00	3.00	A
LAW	839	001	Innovation in Life Sciences	Nicholson Price	2.00	2.00	2.00	A
LAW	900	377	Research	Nicholson Price	1.00	1.00	1.00	A
LAW	910	001	Child Advocacy Clinic	Joshua Kay	4.00	4.00	4.00	B+
LAW	911	001	Child Advocacy Clinic Seminar	Frank Vandervort	3.00	3.00	3.00	A-
Term Total				GPA: 3.753	15.00	15.00	15.00	
Cumulative Total				GPA: 3.490	40.00	45.00		
Winter 2023 (January 11, 2023 To May 04, 2023)								
LAW	663	001	Legal Tech Literacy&Leadership	Dennis Kennedy	2.00	2.00	2.00	A
LAW	712	002	Negotiation	Barbara Kaye	2.00	2.00	2.00	A
LAW	727	001	Patent Law	Rebecca Eisenberg	4.00	4.00	4.00	B+
LAW	737	001	Higher Education Law	Jack Bernard	4.00	4.00	4.00	A-
LAW	877	001	Law in Slavery and Freedom	Rebecca Scott	2.00	2.00	2.00	B+
LAW	900	348	Research	Gabe Mendlow	2.00	2.00	2.00	A
Term Total				GPA: 3.662	16.00	16.00	16.00	
Cumulative Total				GPA: 3.539	56.00	61.00		

End of Transcript
Total Number of Pages 2

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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993	Beginning Summer Term 1993
A+ 4.5	A+ 4.3
A 4.0	A 4.0
B+ 3.5	A- 3.7
B 3.0	B+ 3.3
C+ 2.5	B 3.0
C 2.0	B- 2.7
D+ 1.5	C+ 2.3
D 1.0	C 2.0
E 0	C- 1.7
	D+ 1.3
	D 1.0
	E 0

Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

June 01, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write this letter of recommendation for Carlos Larrauri. Carlos is a fascinating person with a diverse array of talents and skills. He will make a wonderful clerk.

Carlos worked in the Pediatric Advocacy Clinic during the summer of 2021. He had just finished his 1L year, where the law school was operating almost entirely remotely, and we were facing another summer of remote work. No one was excited about this, but Carlos brought excellent energy to his experience and the focus necessary to learn as much as he could from it.

Students in the clinic represent low income families on legal issues connected to child health and wellbeing. They work in an interdisciplinary team of social workers, physicians, and lawyers in an effort to address social determinants of health. During the regular semester, students take a class alongside their clinic work. Over the summer, students work in the clinic as a full-time job. Carlos' background in healthcare and in mental health specifically made me excited to have him as a student in the clinic. He did not disappoint.

Carlos worked on a number of cases over the summer. I'll describe one in particular because it showcases his skills. The clinic was representing a survivor of domestic violence, originally from Bangladesh, who was seeking a personal protection order against her husband. The case was complicated because the client had experienced an enormous amount of trauma and also had significant mental health concerns. Her husband had recently had guardianship over her and the clinic had helped her get that guardianship terminated. Now she wanted protection from her husband's abuse as well as a divorce and custody of her daughter. Carlos was the perfect person to put on this case. He was able to deftly navigate the many cultural and mental health issues that working with this client presented. He counseled her with skill and kindness and prepared her to testify in her trial. Carlos wrote direct and cross examination questions and conducted the direct examination and cross examination of multiple witnesses. One of the witnesses was the client's 22-year-old son. Carlos was particularly sensitive to him and the issues surrounding testifying in a case between two parents.

In addition to Carlos' high quality work on his cases, he was a cheerful and calming presence for the other clinic students when we met weekly over zoom. He shared his insights about the clinic's many ongoing cases and helped his fellow students think about them more holistically. Carlos is also exceptionally organized – he managed to work a second job during the summer without letting anything slip through the cracks. With his multiple degrees, his extensive advocacy and counseling experience, and his passion for helping others, I can't wait to see what he does with his legal career. Starting that career with a clerkship seems like the perfect first step. I recommend him highly.

Please let me know if you need any additional information from me.

Sincerely,

Debra Chopp

University of Michigan Law School
Clinical Professor of law
Associate Dean for Experiential Education
Director, Pediatric Advocacy Clinic
(734) 763-1948
dchopp@umich.edu

Debra Chopp - dchopp@umich.edu - 734-763-1948



HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

PROFESSOR MICHAEL STEIN

*Executive Director,
Harvard Law School Project on Disability*

*Austin Hall 305
1515 Massachusetts Avenue
617-495-1726; mastein@law.harvard.edu*

March 30, 2023

Dear Judge:

I am co-founder and Executive Director of the Harvard Law School Project on Disability and a Visiting Professor at Harvard Law School since 2005, and have known Carlos Larrauri since he began his master's in public administration in the fall of 2021 at the Harvard Kennedy School, where he received a Zuckerman Fellowship from Harvard's Center for Public Leadership in recognition of his demonstrated service and leadership potential. Carlos was in my HKS Disability Law and Policy class, where he was among the brightest and most passionate students. Even among the highly ambitious and dynamic group that HKS attracts, Carlos is a stand-out, both academically and as a leader. In the semesters since, Carlos and I have worked closely on several academic projects.

I have been particularly struck by Carlos's exceptional ability to meld practical experience with legal and policy analysis and to understand and anticipate the practical implications of law and policy decision making. He possesses a rare combination of incisive thought leadership, multidisciplinary training, and strong written and oral advocacy.

We recently published both a short book review and an article entitled *HIPAA vs. Ethical Care: Accounting for Privacy with Neuropsychiatric Impairments* that was featured on the cover issue of PSYCHIATRIC TIMES. Carlos's research and writing are notable for their high level of reasoning and care. He articulates legal arguments with clarity and force, skillfully balancing careful research, rigorous analysis, and persuasive writing. Additionally, Carlos consistently demonstrates professionalism and maturity in working with colleagues. His dedication to the study of law, strong work ethic, and congeniality makes him an excellent candidate for a clerkship. I believe he will reflect well upon your chambers now and in the future.

Please do not hesitate to contact me should you have any questions about Carlos.

Yours sincerely,

Michael Stein

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109-1215

Gabriel S. Mendlow
Professor of Law and Professor of Philosophy

June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to recommend Carlos Larrauri for a clerkship. After a strong performance in my 1L Criminal Law class at Michigan, Carlos took on two credits of independent research assisting me with a book project on criminal law and freedom of thought. He quickly established himself as one of the finest research assistants I have ever employed. Given the exceptional quality of his work product and his high degree of professionalism, I am confident that Carlos would make a wonderful law clerk. If I were a judge, I would hire him without hesitation.

An accomplished mental health practitioner pursuing both a J.D. at Michigan and a Master of Public Administration at Harvard, Carlos possesses knowledge and experience that are very rare for a law student. Carlos is a psychiatric registered nurse who has worked not only as a front-line clinician treating the most challenging patient populations, but also as a clinic director, a pharmaceutical researcher, a clinical instructor, a lecturer, and a published author. Building on this formidable foundation, Carlos has used his time at Michigan and Harvard to develop expertise in mental health law and policy. While I have found that law students with advanced training in another field and significant prior work experience sometimes have trouble learning how to think, write, and reason like a lawyer, Carlos has distinguished himself as a legal researcher and writer, having served as a Senior Editor of the Michigan Law Review. He is, in short, a talented lawyer-to-be—not to mention a conscientious, hardworking, and humble co-worker.

Capable of conducting expert-level research at the intersection of three fields—health law, health policy, and psychiatry—Carlos was uniquely qualified to provide the assistance I needed for a research project on the legal and ethical implications of coercion and forced treatment in mental healthcare. He wrote several outstanding memoranda integrating disparate topics that very few people could have handled as expertly as he did—from analytical summaries of the case law governing restoration of trial competency to lucid synopses of research on the phenomenology and subjective experiences of patients who had been subjected to forced psychotropic medication. Each of Carlos' first drafts was as well-written, impeccably-sourced, and tightly organized as material for which I would gladly award a grade of A.

Most impressive about Carlos is the depth of his commitment to reforming the law, policy, and practice of mental health. As a practitioner, Carlos has worked to provide compassionate and culturally competent care to patients with mental health conditions. As a policy advocate, he has argued for policies that promote mental health parity and expand access to much needed services. As a budding lawyer, he is committed to a career in healthcare advocacy. I am genuinely excited to see what he accomplishes in the years ahead.

As you can see, I think very highly of Carlos. It is difficult for me to describe Carlos' professionalism and maturity without sounding hyperbolic. He would be a dream to have in chambers.

Please don't hesitate to contact me if you have any questions.

Sincerely,

Gabriel S. Mendlow

Gabriel Mendlow - mendlow@umich.edu - 734-764-9337

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109-1215

W. Nicholson Price II
Professor of Law

May 30, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to enthusiastically recommend Carlos Larrauri for a clerkship in your chambers. Carlos is a bright, tremendously motivated, energetic student who will be an asset to chambers.

Carlos was a student in my Innovation in the Life Sciences seminar in Fall 2022. The seminar asks students to master a complex body of literature about the different bodies of law influencing biomedical innovation, from patent law to FDA law to insurance reimbursement policy. It's complicated, and I demand a lot of the students: mastering hard readings, self-directed class contribution, and high-quality writing. Carlos was a frequent class contributor; his comments were smart, incisive, and interesting. And when he was wrong, he was good about recognizing it. All of this bodes well for his possibilities as a clerk.

I want to single out Carlos' term paper. I give my seminar students the option to write a term paper or several shorter responses; Carlos chose the paper. He was sharp in coming up with early, interesting possibilities, discussed them with me thoughtfully, and leapt into the topic he chose: inadequate incentives and development challenges for drugs to treat serious mental illness. His first draft was well written, well formatted, and well sourced—and well short of the mark in terms of making a convincing argument. I gave him tough criticism, suggesting major structural changes, big cuts, and new emphases. I didn't give him the answers, but I pointed out big problems. And I was truly, delightfully surprised by how well he responded to my critiques. His revised draft was terrific; much, much better, convincing, polished, and interesting. I recommended that he try to publish it (and indeed, I know he has been publishing elsewhere as well). Carlos' willingness to work hard to improve a paper that was polished but flawed is a real strength, and one that I think is an excellent one in a clerk. Clerking involves a steep learning curve, and I think Carlos will charge up that learning curve at full speed.

I'd be remiss if I didn't mention a bit about Carlos' path. He's a first-gen student, and he's absolutely passionate about healthcare advocacy. I think he's going to be an excellent, driven lawyer, and that clerking will be an important step in his professional development.

Finally, personally Carlos has been great to work with. He's unfailingly polite and professional; comes into meetings ready to go and move tasks forward; writes careful, succinct, emails; and is generally very efficient while still being warm and engaged. It makes things very easy.

It should be clear that I think highly of Carlos. He's smart, hard-working, and very focused. I suspect he will make a very good clerk, and I hope you take the time to meet him and see for yourself.

Thank you for taking the time to read this letter; if you have any other questions, or if there's anything else I can usefully say, please don't hesitate to contact me at 301-467-0643 or wnp@umich.edu.

Sincerely yours,

W. Nicholson Price II
Professor of Law
University of Michigan Law School

Carlos A. Larrauri

9818 SW 94th Terrace, Miami, FL 33176
(305) 510-9196 • larrauri@umich.edu

Writing Sample #1

I wrote this memo for my first-semester legal research and writing class. The hypothetical case involved the fictional Reasonable Accommodations Action Network (RAAN) suing Southern Michigan University (SMU) for violating the Michigan Freedom of Information Act (MFOIA). SMU denied an MFOIA request for student data (SMUID numbers) based on the “personal privacy” exemption of MFOIA. As such, I analyzed whether SMU could meet both elements of the “personal privacy” exemption under MFOIA. This memorandum is my work product and has not been edited by other persons.

Carlos A. Larrauri
Writing Sample #1

BRIEF ANSWER

The issue is whether the Michigan Freedom of Information Act's personal privacy exemption protects the SMUID numbers. They are likely not protected. Two elements are necessary to exempt information from public disclosure. First, the information must consist of a "personal nature," and second, disclosing such information must constitute a "clearly unwarranted" invasion of privacy. A court may find that the information does not constitute a clearly unwarranted invasion of privacy because the disclosure would shed light on whether SMU is performing its statutory duty by treating students with reasonable accommodations requests fairly.

STATEMENT OF FACTS

The Reasonable Accommodation Advocacy Network is a disability rights watchdog group. It has filed an MFOIA request with Southern Michigan University to determine if the university was withholding information regarding students' requests for reasonable accommodations.

Previously, SMU had announced the creation of the REACT study to audit SMU's resources for students who request reasonable accommodations under the Americans with Disabilities Act. SMU hired Professor Theo Dun to determine how many SMU students had requested reasonable accommodations in the last three years and how many requests had been accepted or denied. Professor Dunn found that SMU approved only approximately 16% of SMU students who requested reasonable accommodations under the ADA in the last three years.

Professor Dunn subsequently distributed a spreadsheet to the SMU administration and the Board that included a list of the students used in the study to explain how he reached his results. The spreadsheet did not list the students' names, information regarding the students' accommodation requests, the medical information submitted with the requests, or whether the accommodation requests were granted or denied. After Professor Dunn presented his results, SMU President Julie Parker sent an email to the SMU administration and the Board instructing them not

Carlos A. Larrauri
Writing Sample #1

to discuss the results and to blame the budget for the delay in reporting them. When asked on air about the results of the REACT study, President Parker said, “The REACT study is currently on hold as we are determining the budget for next year. I can’t give any more information about it at this time.”

Shortly after, RAAN received an anonymous tip that SMU’s REACT study results were being kept from the public because the results were not favorable for SMU. At this point, RAAN filed its MFOIA request asking for SMU to disclose Professor Dunn’s findings, including the spreadsheet he presented to the administration and the Board. Southern Michigan University promptly responded to RAAN’s MFOIA request. It declined to disclose the spreadsheet to RAAN, asserting that disclosing Professor Dunn’s materials would reveal personal information about SMU students because there were various ways for tracing back SMUID numbers to the students’ identities. For example, the student information can be traced back to students’ names and email addresses through the SMU online directory. The SMU online directory is accessible to the public through the SMU library portal.

Instead, SMU proposed disclosing the spreadsheet to RAAN with all the SMUID numbers redacted; however, RAAN refused, explaining that some professors had committed recent fraud on similar studies. Further, RAAN explained to SMU that they required the SMUID numbers list to verify that each student used in the study was a real student who attended SMU. They explained that it did not intend to link the SMUID numbers with student identities, but instead, it would be analyzing the SMUID numbers themselves to check for numerical consistency and statistical regularity. Southern Michigan University again refused to disclose the unredacted spreadsheet, citing the personal privacy exemption of MFOIA, and stated that it was its final determination to deny the MFOIA request.

Carlos A. Larrauri
Writing Sample #1

DISCUSSION

The issue is whether SMU can withhold the requested SMUID numbers under the privacy exemption of the MFOIA. According to the Michigan statute:

It is the public policy of this state that all persons . . . are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

Mich. Comp. Laws § 15.231 (2018). The MFOIA is a pro-disclosure statute that a public body should interpret broadly to allow public access. *Id.* A public body may be exempt from disclosure of a public record, but it should interpret MFOIA exemptions narrowly to prevent undermining its disclosure provision. *Booth Newspapers, Inc. v. Univ. of Mich. Bd. of Regents*, 507 N.W.2d 422, 431 (1993). Furthermore, the burden of proving the need for the exemption applies to the public body. *Id.*

A public body may exempt from disclosure “[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” Mich. Comp. Laws § 15.243. A plain meaning analysis establishes that two elements are necessary to exempt information from public disclosure. *Booth*, 507 N.W.2d at 431. First, the information must consist of a “personal nature,” and second, disclosing such information must constitute a “clearly unwarranted” invasion of privacy. *Id.*

This memo will analyze the privacy exemption’s applicability. It will not scrutinize whether the student information constitutes a public record or if SMU constitutes a “public body.” Additionally, it will not examine any other exemption that SMU may invoke to withhold the student information. Southern Michigan University may be unable to protect the information from RAAN. The student information consists of a personal nature because it can be linked to individuals and associated with their request for reasonable accommodations. However, disclosing it does not constitute a clearly unwarranted invasion of privacy because it would provide the public insight into SMU’s performance of its statutory duty to treat students with accommodations requests fairly.

Carlos A. Larrauri
Writing Sample #1

I. Personal Nature.

The SMUID numbers consists of a personal nature because RAAN can connect the information to individuals. When determining whether the information is of a personal nature, it is necessary to decide whether it is embarrassing, intimate, private, or confidential. *Mich. Fed'n of Tchr. & Sch. Related Pers. v. Univ. of Mich.*, 753 N.W.2d 28, 40 (2008). Furthermore, in determining whether the information is embarrassing, intimate, private, or confidential, it is necessary to consider the community's customs, mores, and ordinary views. *Booth*, 507 N.W.2d at 432. Lastly, the information must be associated with an individual to be embarrassing, intimate, private, or confidential. *Id.*

For example, in *Larry S. Baker*, the court found that the addresses of injured persons, or persons who had been potentially injured or killed in automobile accidents, were of a personal nature because the law firm seeking the records could identify the victims from the addresses. *Larry S. Baker, P.C. v. City of Westland*, 627 N.W.2d 27, 30 (2001). A law firm sued a city after it denied a Freedom of Information Act request for addresses of injured persons and persons potentially injured or killed in automobile accidents. *Id.* at 28. The firm then revised its request, asking for only the addresses of persons and arguing that since the city would redact the names, there would be insufficient identifying characteristics. *Id.* at 30. The court did not find this argument compelling. It reasoned that having been involved in an automobile accident is an embarrassing fact and that an address is a sufficiently identifying characteristic associated with an individual. *Id.*

Second, in addition to being connected to an individual, the information would be embarrassing, intimate, private, or confidential if the information is the kind that someone would choose not to disclose. *ESPN, Inc. v. Mich. State Univ.*, 876 N.W.2d 593, 597 (2015).

For example, in *Mager*, the court focused on whether associating the names with gun ownership is potentially embarrassing, intimate, private, or confidential if disclosed. *Mager v. Dep't of State Police*, 595 N.W.2d 142, 147 (1999). An advocate requested the university police provide him

Carlos A. Larrauri
Writing Sample #1

with a list of names and addresses of persons who owned registered handguns. *Id.* at 143. However, the court held that those names were associated with gun ownership, an intimate and potentially embarrassing detail of one's life. *Id.* at 144. As such, the list constituted information of a personal nature since a citizen's decision to purchase and maintain firearms is a personal choice, and disclosing is typically a private decision. *Id.* at 143.

In our case, student information consists of a personal nature because it can be coupled with individuals and reveal potentially embarrassing, intimate, private, or confidential information that someone would typically choose to disclose. Here, the SMUID numbers can be associated with specific individuals through their names and email addresses. As such, the facts in our case are similar to *Larry S. Baker*, where the court determined an address was sufficient information for associating with a particular person. The student information can be easily traced back to students' names and email addresses through the public SMU online directory, and thus, it can be readily associated with individuals.

Furthermore, RAAN can use the individuals' names and email addresses to identify which individuals have requested reasonable accommodations from SMU. Accordingly, RAAN's case is akin to *Mager*, where the individuals' names could be easily associated with potentially embarrassing, intimate, private, or confidential information, such as gun ownership. Here, the student information can be linked to students who have requested accommodations under the ADA within the past three years. Although the request would not contain any information about the basis of the request or the type of accommodation requested, a general inquiry into a history of seeking accommodations can still be considered information potentially embarrassing, intimate, private, or confidential. Further, disclosing accommodations requests is often a private decision, and as such, the student information consists of a personal nature.

Carlos A. Larrauri
Writing Sample #1

Furthermore, the counter-argument that disclosing the student information to the university constitutes a public disclosure on behalf of the students is unlikely to persuade the court. Even if the information has been disclosed or is otherwise public, it does not mean the students consent to its disclosure in the context of RAAN's request. *Mich. Fed'n of Tchrs.*, 753 N.W.2d 28, 40 (“[D]isclosure of information of a personal nature into the public sphere in certain instances does not automatically remove the protection of the privacy exemption and subject the information to disclosure in every other circumstance.”).

In sum, the student information consists of a personal nature because it can be connected to individuals and associated with potentially embarrassing, intimate, private, or confidential information that someone would typically decide whether to disclose.

II. Clearly Unwarranted.

Nevertheless, disclosing such information does not constitute a clearly unwarranted invasion of privacy because the disclosure would provide the public insight into whether SMU treats students with reasonable accommodations requests fairly. When determining whether disclosure of information constitutes a clearly unwarranted invasion of privacy, courts need to balance the public interest in disclosure against personal privacy protection. *Mager*, 595 N.W.2d at 146. The public interest in disclosure is satisfied when the disclosure would serve FOIA's core purpose — contributing significantly to an understanding of the government's operations or activities. *Id.* In all but a limited number of circumstances, public interest in government accountability must prevail over individuals' or groups' privacy expectations. *Prac. Pol. Consulting v. Sec'y of State*, 789 N.W.2d 178, 193 (2010). Thus, if the information provides the public insight into the agency's statutory duty, it will constitute a warranted invasion of privacy, even if it is personal information. *Id.*

For example, in *ESPN*, the court determined that disclosing the records of incident reports involving student-athletes did not constitute a clearly unwarranted invasion of privacy because the

Carlos A. Larrauri
Writing Sample #1

report served the public understanding of the university's police department's operations. *Id.* at 597.

A sports television network sought the information to learn whether the policing standards were consistent and uniform at the university. *Id.* Disclosure of the students' names was necessary to determine whether student-athletes were treated differently from the general population because they participated in a particular sport or their renown. *Id.* Thus, the disclosure of names was necessary to shed light on the agency's statutory duty, even if the suspects' names in the reports amounted to information of a personal nature. *Id.*

In RAAN's case, disclosing such information does not constitute a clearly unwarranted invasion of privacy because it would further the public's understanding of SMU's treatment of students requesting reasonable accommodations. Correspondingly, RAAN's case is like *ESPN*, where disclosing student-athlete names helped the public understand if the students received differential treatment from the university's police department. Here, shedding light on how SMU operates would outweigh the students' privacy interests because it would provide the public insight into SMU's statutory duty to treat students fairly. Disclosing the student information associated with the SMUIDs would shed light on SMU's treatment of students seeking reasonable accommodations and whether SMU is approving their accommodations at a reasonable rate. Southern Michigan University approved only 16% of SMU students who requested reasonable accommodations under the ADA in the last three years. Furthermore, against the backdrop of universities' previous fraudulent activities with similar studies and lack of transparency, RAAN's request could conceivably lead to an informative inquiry and greater public accountability concerning how SMU treats students with reasonable accommodations requests.

In sum, the disclosure of student names does not constitute a clearly unwarranted invasion of privacy because the disclosure would provide the public insight into SMU's performance of its statutory duty regarding its treatment of students with reasonable accommodations requests.

Carlos A. Larrauri
Writing Sample #1

CONCLUSION

It is unlikely that Southern Michigan University can withhold the information from RAAN. Although the information constitutes information of a personal nature, the disclosure of the information does not constitute a clearly unwarranted invasion of privacy.

Applicant Details

First Name **Taylor**
 Last Name **Lawing**
 Citizenship Status **U. S. Citizen**
 Email Address taylor.b.lawing@vanderbilt.edu
 Address

Address**Street****905 20th Ave S #906****City****Nashville****State/Territory****Tennessee****Zip****37203****Country****United States**

Contact Phone
 Number **7048042530**

Applicant Education

BA/BS From **University of North Carolina-Chapel Hill**

Date of BA/BS **December 2019**

JD/LLB From **Vanderbilt University Law School**

[http://law.vanderbilt.edu/employers-cs/
 judicial-clerkships/index.aspx](http://law.vanderbilt.edu/employers-cs/judicial-clerkships/index.aspx)

Date of JD/LLB **May 11, 2024**

Class Rank **School does not rank**

Law Review/Journal **Yes**

Journal(s) **Vanderbilt Law Review**

Moot Court
 Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Bressman, Lisa
lisa.bressman@vanderbilt.edu
615-343-6132
Sitaraman, Ganesh
ganesh.sitaraman@vanderbilt.edu
615-322-6761
Fritz, Kristine
Kristine.Fritz@usdoj.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Taylor Breeze Lawing
905 20th Avenue S, Apt. 906
Nashville, TN 37203

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am writing to be considered for a clerkship during the 2024-2025 term. I am a third-year law student at Vanderbilt, where I serve as a Notes Editor for the VANDERBILT LAW REVIEW. As an aspiring public servant, I would benefit greatly from a clerkship in your chambers and from the opportunity to serve the Eastern District.

My organizational, research, and writing skills prepare me to contribute meaningfully to the court. At the Federal Communications Commission, I create digestible briefing sheets for Commissioner Geoffrey Starks's upcoming votes, including the recent Order to waive the budget control mechanism for rate-of-return carriers. This experience has enhanced the clarity of my writing, as my weekly assignments include consolidating research about an upcoming Commission vote into a concise summary of the relevant topic. During my internship with the United States Attorney's Office, I authored complex response briefs filed in the Fourth Circuit Court of Appeals and researched topical issues, including the scope of 404(b) evidence and convictions under the Armed Career Criminal Act. Throughout that experience, I sought out and incorporated constructive criticism to continually improve my brief writing. While I worked for the Biden and Bloomberg campaigns during the 2020 election cycle, I strengthened my time management skills and attention to detail while planning high profile events for presidential candidates and organizing contracts for event space. This administrative role prepared me to serve as a law clerk in a range of ways, and I have seen how my carefully honed attention to detail has been valuable for issue spotting and meeting the rigorous demands of law school.

I would appreciate the opportunity to interview. Enclosed please find my resume, writing sample, and law school transcript. Three letters of recommendation from Dean Lisa Bressman, Assistant United States Attorney Kristine Fritz, and Professor Ganesh Sitaraman are also included in my application. I can be reached by phone at (704) 804-2530 or by email at taylor.b.lawing@vanderbilt.edu. Thank you for your consideration.

Sincerely,



Taylor Lawing

TAYLOR B. LAWING

905 20th Ave S, Nashville, TN 37203 | (704) 804-2530 | taylor.b.lawing@vanderbilt.edu

EDUCATION

VANDERBILT LAW SCHOOL Nashville, TN
 Candidate for *Doctor of Jurisprudence* May 2024
GPA: 3.625
Journal: Notes Editor, VANDERBILT LAW REVIEW
Honors: Dean's List; 2023 Student Organization Community Service Award; Branstetter Summer Fellow
Activities: President, Women Law Students Association; Member, Vanderbilt First Generation Lawyers

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL Chapel Hill, NC
Bachelor of Arts, History; Bachelor of Arts, Women's and Gender Studies December 2019
GPA: 3.85 (Dean's List 2016-2019, Phi Beta Kappa)
Activities: Editor-in-Chief, Cellar Door Literary Magazine

EXPERIENCE

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES Washington, DC
Legal Intern Fall 2023

FEDERAL COMMUNICATIONS COMMISSION Washington, DC
Legal Intern, Office of Commissioner Geoffrey Starks Summer 2023

- Authored weekly briefing statements for upcoming Commission votes, including the Order waiving the budget control mechanism for rural telecommunications carriers.
- Researched legislation connected to broadband connectivity and prepared the Commissioner for his reconfirmation hearing in the Senate.

RESEARCH ASSISTANT Nashville, TN
Dean Lisa Schultz Bressman Fall 2022 – Spring 2023

- Conducted research on the intersection of Bankruptcy courts and federal administrative agencies.
- Compiled cases and agency memoranda for the new edition of The Regulatory State casebook.

U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NORTH CAROLINA Raleigh, NC
Legal Intern, Appellate Division Summer 2022

- Drafted seven briefs filed with the Fourth Circuit Court of Appeals.
- Researched and prepared a motion to exclude expert testimony.
- Performed supplementary research for attorneys in the Appellate, Civil, and Criminal divisions.

PROJECT N95 Raleigh, NC
Press and Communications Coordinator Winter 2020 – Spring 2021

- Led external communications with members of the press and organized interviews.
- Developed fundraising plan and organized weekly press conferences with national and local media.

BIDEN FOR PRESIDENT Raleigh, NC
Campaign Advance Contractor Fall 2020

- Served as Crowd Lead, managing guests' arrival and departure, for Vice President Kamala Harris's events.
- Managed 30 volunteers and was responsible for clearly communicating the campaign's talking points and goals.

MIKE BLOOMBERG 2020 New York, NY
Campaign Advance Contractor Winter 2019 – Spring 2020

- Planned and executed 15 events for the Mike Bloomberg 2020 campaign, including 3,000-person rallies.
- Coordinated press logistics and worked alongside state communications teams to prepare media interviews.

PUBLICATIONS, COMMUNITY INVOLVEMENT, & INTERESTS

- Avoiding a "Nine-Headed Hydra": Intervention as a Matter of Right by Legislators in Federal Lawsuits After *Berger* – publication forthcoming in January 2024 issue of VANDERBILT LAW REVIEW.
- Volunteer with Safe Haven Family Shelter, 2022-2023.
- Enjoy Pilates, gardening, Gilded Age Politics, and fantasy football.

OFFICE OF THE UNIVERSITY REGISTRAR
NASHVILLE, TENNESSEE 37240

VANDERBILT UNIVERSITY

Name : Taylor Breeze Lawing
Student # : 000445803
Birth Date : 11/02Information contained in this document is confidential and should not be
released to a third party without the written permission of the student.
A black and white document is not official.

Date: 06/07/2023

Academic Program(s)

Law J.D.
Law Major

Law Academic Record (4.0 Grade System)

				2021 Fall	
LAW	6010	Civil Procedure	4.00	B+	13.20
Instructor:		Ingrid Wuertth			
LAW	6020	Contracts	4.00	B+	13.20
Instructor:		Owen Jones			
LAW	6030	Criminal Law	3.00	B+	9.90
Instructor:		Christopher Slobogin			
LAW	6040	Legal Writing I	2.00	A	8.00
Instructor:		Elon Slutsky			
		Jennifer Swezey			
		Anvitha Yalavarthy			
LAW	6060	Life of the Law	1.00	P	0.00
Instructor:		Timothy Meyer			
		Sara Mayeux			

				2022 Fall	
LAW	5750	Law Review	0.00	P	0.00
Instructor:		Jennifer Shinall			
LAW	7000	Administrative Law	3.00	A-	11.10
Instructor:		Kevin Stack			
LAW	7078	Constitutional Law I	4.00	B+	13.20
Instructor:		Matthew Shaw			
LAW	7221	Human Trafficking Short Course	1.00	P	0.00
Instructor:		Michael Newton			
		John Richmond			
LAW	7534	Networks, Platforms, Utilities	4.00	A-	14.80
Instructor:		Ganesh Sitaraman			
		Phillip Ricks			
LAW	7800	Research Asst for Credit	2.00	P	0.00
Instructor:		Lisa Bressman			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	14.00	11.00	39.10	3.554
CUMULATIVE:	45.00	41.00	145.90	3.558

	EHRS	QHRS	QPTS	GPA
SEMESTER:	14.00	13.00	44.30	3.407
CUMULATIVE:	14.00	13.00	44.30	3.407

				2022 Spring	
LAW	6050	Legal Writing II	2.00	A-	7.40
Instructor:		Elon Slutsky			
		Anvitha Yalavarthy			
LAW	6070	Property	4.00	B+	13.20
Instructor:		John Ruhl			
LAW	6080	Regulatory State	4.00	A	16.00
Instructor:		Lisa Bressman			
LAW	6090	Torts	4.00	A-	14.80
Instructor:		Edward Cheng			
LAW	8020	Adv Topics Int'l Humanitarian	3.00	A-	11.10
Instructor:		Michael Newton			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	17.00	17.00	62.50	3.676
CUMULATIVE:	31.00	30.00	106.80	3.560

Term Honor: Dean's List 2023 Spring

Dean's List 2023 Spring

LAW	5750	Law Review	1.00	P	0.00
Instructor:		Jennifer Shinall			
LAW	7038	Election Law Campaign Finance	3.00	A-	11.10
Instructor:		Kevin Stack			
LAW	7071	Communications Law and Policy	1.00	P	0.00
Instructor:		Paul Werner			
LAW	7114	Corporations	3.00	A-	11.10
Instructor:		Randall Thomas			
LAW	7470	Local Government Law	1.00	A-	3.70
Instructor:		Karl Dean			
LAW	7600	Professional Respons.	3.00	A	12.00
Instructor:		Mozianio Reliford			
LAW	7800	Research Asst for Credit	1.00	P	0.00
Instructor:		Lisa Bressman			
LAW	8040	Constitutional Law II	3.00	A	12.00
Instructor:		Sara Mayeux			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	16.00	13.00	49.90	3.838
CUMULATIVE:	61.00	54.00	195.80	3.625

----- NO ENTRIES BELOW THIS LINE -----

Lawing
Taylor LawingSIGNATURE IS WHITE WITH A GOLD BACKGROUND.
A RAISED SEAL IS NOT REQUIRED.BART P. QUINET
ASSISTANT PROVOST
AND UNIVERSITY REGISTRAR

OFFICE OF THE UNIVERSITY REGISTRAR
NASHVILLE, TENNESSEE 37240

VANDERBILT UNIVERSITY

Page 2 of 2

Name : Taylor Breeze Lawing
Student # : 000445803
Birth Date : 11/02

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released to a third party without the written permission of the student.
A black and white document is not official.

Date: 06/07/2023

Lawing
Taylor Lawing

SIGNATURE IS WHITE WITH A GOLD BACKGROUND.
A RAISED SEAL IS NOT REQUIRED.

BART P. QUINET
ASSISTANT PROVOST
AND UNIVERSITY REGISTRAR



Vanderbilt University
Office of the University Registrar
PMB 407701
110 21st Avenue South, Suite 110
Nashville, TN 37240-7701
615-322-7701
university.registrar@vanderbilt.edu
registrar.vanderbilt.edu

Academic Calendar: The academic year consists of fall and spring semesters and a summer term. The Doctor of Medicine program is offered on a year term.

Academic Units: Credit hours are semester hours except in the Doctor of Medicine program. Credits in the Doctor of Medicine program are course- or rotation-based.

Accreditation: Vanderbilt University is accredited by the Southern Association of Colleges and Schools.

Release of Information: This document is released at the request of the student and in accordance with the Family Educational Rights and Privacy Act of 1974. It cannot be released to a third party without the written consent of the student.

Course Numbers (effective Fall 2015):

0000-0999 Non-credit, non-degree courses;

do not apply to degree program

0800-0999 Courses that will eventually be given credit (e.g., study abroad)

1000-2999 Lower-level undergraduate courses

3000-4999 Upper-level undergraduate courses

5000-5999 Introductory-level graduate and professional courses (including those co-enrolled with undergraduates)

6000-7999 Intermediate-level graduate and professional courses

8000-9999 Advanced-level graduate and professional courses

Additional information on course numbering is available at registrar.vanderbilt.edu/faculty-staff/course-renumbering/.

Course Numbers (prior to Fall 2015):

100- and 1000-level courses are primarily for freshmen and sophomores. May not be taken for graduate credit.

200- and 2000-level courses are normally for juniors and seniors. Selected courses may be taken for graduate credit.

300-, 3000-, and above-level courses are for graduate and professional credit only - unless special permission is granted.

Grading Systems:

For information about grading systems in place prior to the dates listed, visit registrar.vanderbilt.edu/transcripts/transcript-key/.

College of Arts and Science (A&S), effective Fall 1982;

Blair School of Music (BLR), effective Fall 1986;

Divinity School (DIV), effective Fall 1983;

Division of Unclassified Studies (DUS), effective Fall 1982;

School of Engineering (ENG), effective Fall 1991;

Graduate School (GS), effective Fall 1992;

School of Medicine (MED), effective Fall 1988;

other Doctoral Programs, effective Fall 2010;

School of Nursing (NURS), effective Fall 2007;

Peabody College (PC) undergraduate, effective Fall 1990;

Peabody College (PC) professional, effective Fall 1992.

A+	4.3	LAW only
A+	4.0	Not in A&S, DIV (or BLR, PC as of Fall 2012)
A	4.0	
A-	3.7	
B+	3.3	
B	3.0	
B-	2.7	
C+	2.3	
C	2.0	
C-	1.7	
D+	1.3	Not in PC professional, NURS (or GS, MED as of Fall 2011)
D	1.0	Not in PC professional, NURS (or GS, MED as of Fall 2011)
D-	0.7	Not in PC professional, MED, NURS (or GS as of Fall 2011)
F	0.0	

Owen Graduate School of Management (OGSM)

Master of Accountancy, effective Fall 2011.		All Management Programs, effective Fall 2007.	
A	4.0	SP	Superior Pass 4.0
A-	3.5	HP	High Pass 3.5
B	3.0	PA	Pass 3.0
B-	2.5	LP	Low Pass 2.5
F	0.0	F	Fail 0.0

School of Medicine (MED) Doctor of Medicine Program, effective 2003.

H	Honors	Superior or outstanding work in all aspects.
HP	High Pass	Completely satisfactory work with some elements of superior work.
P	Pass	Completely satisfactory work in all aspects.
P*	Marginal Pass	Serious deficiencies requiring additional work (temporary grade).
F	Fail	Unsatisfactory work.

Current and Cumulative Statistics:

EHRHS Earned Hours
QHRS Quality Hours
QPTS Quality Points
GPA Grade Point Average
(calculated as GPA = QPTS/QHRS)

Other Symbols:

AB Absent from final examination (temporary grade)**
AU/AU Audit**

AW Audit Withdrawal**

CE Credit by Examination

CR Credit only (no grade due)

E Condition, with permission to retake exam (temporary grade)**

H Incomplete in Arts and Science Honors course (temporary grade)**

I Honors in Divinity School**

IP Incomplete (temporary grade)**

LP In Progress (temporary grade)**

M Low Pass (DIV, GS)**

M Absent from final examination (temporary grade)**

MI Absent from final examination and incomplete (temporary grade)**

NC No credit toward current degree**

NO EQ Transfer or study abroad coursework with no Vanderbilt equivalent

P Pass**

PI Permanent Incomplete (DIV, GS, LAW, MED)**

PM Pass-Medical (GS only)

R Repeat of previous course

RC Previous trial of repeated course**

S Satisfactory**

U Unsatisfactory**

W Withdrawal**

WF Withdrawal while failing**

WP Withdrawal while passing**

X Grade unknown, hours earned awarded**

** Does not affect grade point average. (Prior to Fall 2008, the AB, I, M, and MI grades were calculated as an F in A&S and PC.)

UNIV: Courses offered in the UNIV subject are University Courses.

The University Course Initiative was developed to promote new and creative trans-institutional learning. For more information, please see vu.edu/university-courses.

For changes to this key since the last revision, please visit registrar.vanderbilt.edu/transcripts/transcript-key/.

Revised 5/1/2022

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Taylor Lawing, a second-year law student at Vanderbilt Law School, for a clerkship in your chambers. Taylor was a student in my Regulatory State course last year, and based on her contribution to that course alone, I hired her as research assistant for this year. I rarely hire rising 2Ls, preferring students with more law school experience, but Taylor was the exception. She has been and continues to be exceptional not only as my research assistant but in difficult classes, involvement in various student organizations, and membership on the VANDERBILT LAW REVIEW. In addition, she is a wonderful person. I believe she would be an asset to your chambers. I am pleased to provide this recommendation.

Taylor was a standout in Regulatory State. That course, offered at a handful of schools, introduces statutory interpretation and agency regulation in the first year of law school. It is a unique challenge for students whose other courses mainly are steeped in the common law. It requires comfort with a menu of options open to judges when traditional first-year courses often supply more of a checklist – for example, a meeting of the minds, consideration, breach, damages. The doctrine is also changing dramatically and at a rapid pace. Taylor embraced the challenge while many classmates expressed confusion and discomfort. She was able to digest and analyze complex material. She made connections between cases that others may not have seen. More than that, she was thoughtful in answering my questions and raising those of her own. She was not afraid to be wrong, volunteering answers to the most difficult questions, those that no court had resolved, though honestly, I cannot remember an occasion when she was not spot on.

I hired Taylor as a research assistant as soon as spring grades were in. She spent last semester researching an area of the law with which neither of us is familiar: bankruptcy. I now regard her as far more of an expert than I am, so it is fortunate that she has agreed to continue as my research assistant this semester as I build out the argument for my article. Throughout last semester, Taylor demonstrated the ability to self-start, follow complex legal trails, and ask good questions before unnecessarily spinning her wheels. She wrote me detailed memos with her research results. Although the memos are not examples of formal legal writing, they are close to the type of writing that might assist a judge in writing an opinion or appear in an excellent bench memo. I will note that Taylor received top grades in first-year Legal Research and Writing, which tends to reflect skill with formal legal writing.

Finally, Taylor is a sincerely nice person. She balances academic intensity with a warm personality, many outside interests, and practical work experiences. Initially she may come off as a bit quiet, but she lights up when talking about her work.

I believe that Taylor will make an outstanding law clerk, and I hope that you will consider interviewing her for the position. If I may provide any further information, please do not hesitate to contact me. Thank you for your consideration.

Yours sincerely,

Lisa Schultz Bressman
David Daniels Allen Distinguished Chair in Law
Vanderbilt Law School

Lisa Bressman - lisa.bressman@vanderbilt.edu - 615-343-6132

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to wholeheartedly recommend Taylor Lawing for a judicial clerkship in your chambers. Taylor was a student in my class on Networks, Platforms, and Utilities in the fall of 2022.

Taylor was great in class. Networks, Platforms, and Utilities (NPU) is a new course—a revived and refashioned version of the course once called “regulated industries.” In the class, we go into a deep dive into the transportation, communications, energy, finance and banking, and tech sectors. The reading was expansive (too much, honestly), and much of it complex (e.g. electricity deregulation, payment systems). Taylor was one of the students who really stood out. She had clearly read the material well, had thought about it, and was excited to explore ideas in class discussion. She also came to office hours frequently to continue the conversation and deepen her knowledge about the material.

As for Taylor’s performance in other classes, some context may be helpful to you. We have a tough curve at Vanderbilt, and most faculty are pretty stingy about giving A’s. The classes she took are also not the easy ones (especially mine). This also speaks to who she is: she’s someone who doesn’t shy away from hard work – and performs well.

I should also say a few words about Taylor as a person. Taylor is kind, thoughtful, and easy to talk to. She is also someone who is able to execute on complex projects. As you’ve seen from her resume, she worked on an advance team for Bloomberg’s presidential campaign, one of the more stressful and logistics-heavy roles in a campaign. When she was in college, she was editor-in-chief of a literary magazine, managing 20 students. At Vanderbilt, she’s leading the Women Law Students Association, where she’s organized events on Dobbs and created a volunteer partnership with the Safe Haven Family Shelter, among other things. These experiences, I think, will serve her well in your chambers. She’ll be able to juggle multiple cases and projects – and do so with aplomb.

In short, from my experiences with Taylor, I believe she would be a great clerk. She is smart, hard-working, and curious. And she’s a kind person you’ll enjoy having around the office. I encourage you to hire Taylor Lawing as a clerk in your chambers.

If there is anything more I can tell you, feel free to contact me by email at ganesh.sitaraman@vanderbilt.edu.

Sincerely,

Ganesh Sitaraman

Ganesh Sitaraman - ganesh.sitaraman@vanderbilt.edu - 615-322-6761

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to recommend Taylor Lawing for the position of law clerk in your chambers. During the summer of 2022, Taylor worked as a full-time law intern with the Appellate Division of the U.S. Attorney's Office for the Eastern District of North Carolina, reporting directly to me. During her internship, she drafted several briefs and motions, conducted legal research for various Assistant U.S. Attorneys, and observed courtroom proceedings.

Taylor tackled each assignment with enthusiasm and drafted briefs, motions, and memoranda that reflected her thorough research of legal issues and skill in crafting thoughtful arguments. Her ability to spot issues and grasp the factual nuances that might impact the potential legal arguments reflected a maturity well beyond the one-year of law school she had just completed before joining our office. With that maturity, Taylor brought substantial humility, welcoming constructive criticism and incorporating what she had learned into her subsequent works. As the summer progressed, her writing grew stronger, clearer, and more persuasive.

Taylor quickly distinguished herself through her initiative, appreciation for the role of law in society, and genuine interest in others. More than any intern I have supervised, Taylor sought out opportunities to learn from others—AUSAs, support staff, agents, and probation officers—about their areas of expertise, how they chose their career paths, and what they find most rewarding about public service. Her decision to pursue a clerkship reflects her commitment to public service based on a thoughtful consideration of all paths available to a young lawyer.

In addition to her intellectual skills, Taylor demonstrated a commitment to her community. She volunteered to assist our civil rights coordinator with community outreach and education. Upon discovering that several of our office's college interns were contemplating law school, she organized an intern lunch-and-learn to answer their questions and even now continues to be a resource for them.

Taylor will serve the legal profession and the community with distinction and humility. I highly recommend her for the position of law clerk and am confident that she would be an asset to your chambers. Please feel free to contact me at (919) 856-4854 with any questions.

Sincerely,

Kristine Fritz
Assistant U.S. Attorney, Appellate Division

Kristine Fritz - Kristine.Fritz@usdoj.gov

TAYLOR B. LAWING

905 20th Ave S, Nashville, TN 37203 | (704) 804-2530 | taylor.b.lawing@vanderbilt.edu

WRITING SAMPLE

The attached writing sample is a brief that I drafted when I was a legal intern at the United States Attorney's Office for the Eastern District of North Carolina. The assignment was to research and write a reply brief, arguing that the defendant's sentence should be affirmed because evidence of his drug trafficking was intrinsic evidence to his charged conduct of unlawfully possessing a firearm as a felon. I chose the Argument section of the brief as my writing sample. Although the sample was edited by my supervisor, Kristine Fritz, it is substantially my writing.

I am submitting the attached writing sample with the permission of the United States Attorney's Office for the Eastern District of North Carolina.

ARGUMENT

Evidence of Defendant's Narcotics Trafficking Was Quintessential Intrinsic Evidence Necessary to Tell the Story of the Crime on Trial.

A. Standard of Review.

This court reviews the district court's decision to admit 404(b) evidence for abuse of discretion, finding so only if the admittance was "arbitrary or irrational." *United States v. Haney*, 914 F.2d 602, 607 (4th Cir. 1990).

B. Discussion of Issue.

Defendant argues that the district court erroneously allowed evidence of his drug dealing and claims that this evidence is not inextricably intertwined with the charge of possession of a firearm by a felon. Brief at 7-8. Specifically, he argues that the government's evidence labelling him a drug dealer was unduly prejudicial and not admissible. Brief at 7-8, 14.

Evidence of Defendant's narcotics dealing was intrinsic to the charged offense, as it showed to the jury how he obtained the firearms, why he kept them in the apartment, and the reason for the search by probation officers. Alternatively, the same evidence is admissible under Rule 404(b) of the Federal Rules of Evidence, as it demonstrated opportunity, intent, preparation, plan, modus operandi, and identity. Either way, the evidence was properly admitted, and the district court did not abuse its discretion.

1. The Evidence Was Admissible as Intrinsic Evidence.

Evidence is intrinsic if it arose out of the same series of transactions as the charged offense, or if it is “necessary to complete the story of the crime (on trial.” *United States v. Kennedy*, 32 F.3d 876, 885 (4th Cir. 1994) (internal quotation marks and citation omitted). Evidence is also intrinsic if it is “necessary to provide context relevant to the criminal charges.” *United States v. Basham*, 561 F.3d 302, 326 (4th Cir. 2009) (citation and quotation marks omitted). When other criminal conduct is “inextricably intertwined” with charged conduct, or when it is “part of a single criminal episode,” it is intrinsic and admissible. *United States v. Chin*, 83 F.3d 83, 88 (4th Cir. 1996) (internal quotation marks omitted). Intrinsic evidence need not fall within the time period of the indictment, and it is not considered “other crimes” evidence subject to Rule 404(b). *Kennedy*, 32 F.3d at 885.

Here, evidence of Defendant’s narcotics dealing was intrinsic to telling the “story of the crime” and “necessary to provide context relevant” to the offense conduct. *Id.* First, the paraphernalia indicative of drug dealing was found with the firearms “during the same criminal episode.” *United States v. Vincent*, 316 F. App’x 275, 278 (4th Cir. 2009) (unpublished). The probation officers uncovered evidence of narcotics trafficking and the firearms in the same search of Defendant’s apartment on March 28, 2017. J.A. 64-67, J.A. 73-74. In particular, officers located a digital scale with white powder residue that field-tested positive for cocaine, approximately \$1,700, sandwich bags, some tinfoil, and latex gloves,

which in context were “indicative of the sale and delivery of illegal narcotics.” J.A. 74.

Additionally, the evidence of Defendant’s narcotics dealing provides necessary background of how and why he came to possess the firearms. As his brother Christopher told the officers, Defendant obtained the firearms from the same individual who supplied him with narcotics, paying for the weapons with the “proceeds of [Defendant’s] narcotics sales.” J.A. 180, *see* J.A. 278, ¶ 13. He carried the firearms inside the apartment, and he kept one “on him” most of the time in relation to his drug dealing. J.A. 179, *see* J.A. 278, ¶ 15. Relatedly, Defendant’s drug dealing—and Christopher’s decision to leave his legitimate job to work for his brother—provided useful insight into the brothers’ relationship and provided context for Christopher’s knowledge about the presence of the contraband throughout Defendant’s home. *See* J.A. 172-174, J.A. 176-181.

Finally, the evidence of Defendant’s drug involvement also provides the necessary background regarding the probation officer’s search on March 28, 2017. When planning Operation Spring Sweep, the probation office targeted Defendant because of his multiple positive drug tests and past charges involving weapons and/or drugs. J.A. 139. In *United States v. Brown*, this Court found that evidence of car theft was intrinsic to the charge of possession of a firearm by a felon because the theft is what led officers to initially pull over the defendant. 765 F. App’x 902, 907 (4th Cir. 2019) (unpublished). Similarly, here, Defendant’s involvement with drugs directly contributed to his probation officer’s decision to have his apartment searched. J.A. 139.

Therefore, Defendant's drug dealing was intrinsic to the charged offense of possession of a firearm by a felon.

2. Alternatively, the Evidence Was Also Admissible Under Rule 404(b).

Alternatively, the same evidence was admissible under Rule 404(b) as Defendant's drug dealing proved motive, knowledge, and absence of mistake or accident.

Even prior bad acts not considered intrinsic may still be admissible. Federal Rule of Evidence 404(b) "prohibits evidence of other crimes, wrongs, or acts solely to prove a defendant's bad character, but such evidence may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *United States v. Byers*, 649 F.3d 197, 206 (4th Cir. 2011) (internal quotation marks, citations, and alterations omitted). The rule is one of "inclusion, 'admitting all evidence of other crimes or acts except that which tends to prove only criminal disposition.'" *Byers*, 649 F.3d at 206 (quoting *United States v. Young*, 248 F.3d 260, 271-72 (4th Cir. 2001)).

The test for admissibility under Rule 404(b) has three parts. First, the evidence must be relevant to an issue other than character, such as knowledge, modus operandi, or intent. *United States v. Siegel*, 536 F.3d 306, 317 (4th Cir. 2008). Evidence is relevant if it has "a tendency to show that any consequential fact is more probable or less probable than it would be without the evidence." *United*

States v. Robinson, 583 F. App'x 86, 89 (4th Cir. 2014) (unpublished) (citing *United States v. Aramony*, 88 F.3d 1369, 1377 (4th Cir. 1996)).

Second, the evidence must be “necessary,” in that it is an essential part of the crimes on trial or furnishes part of the context for the crimes. *Siegel*, 536 F.3d at 319. That the evidence was “not critical to the prosecution’s case [] does not render it unnecessary for purposes of Rule 404(b).” *United States v. Rooks*, 596 F.3d 204, 211 (4th Cir. 2010).

Finally, the evidence must be reliable. *Siegel*, 536 F.3d at 317. And evidence admitted under Rule 404(b) must also satisfy the general requirement in Rule 403 that the probative value of evidence must not be “substantially outweighed” by unfair prejudice. *Id.* at 319.

Here, the evidence at issue met Rule 404(b)’s rule of “inclusion.” *Byers*, 649 F.3d at 206. First, the evidence was used for purposes other than Defendant’s character. It was included to show Defendant’s knowledge and intent in keeping the firearms at his apartment. He knowingly kept the firearms in his apartment during drug dealings, and he carried the handgun on his person most of the time. J.A. 179; *see* J.A. 278, ¶ 15. Second, the evidence was essential to providing the jury with the context of the crime. He was chosen for this search because of his previous drug/weapons charges and “positive drug screens.” J.A. 139. During the search of the apartment, they found drug paraphernalia throughout the residence and firearms in the upstairs bedrooms. J.A. 139, J.A. 64-66. Moreover, this evidence also shed light on why Defendant had the weapons in his apartment, which was related to the narcotics. J.A. 180. Without this

evidence, the jurors would have lacked necessary background on why the search occurred, and why Defendant possessed the firearms.

Lastly, the evidence was reliable. Defendant's brother testified that he not only witnessed Defendant purchase the guns from his drug supplier, but he also worked for Defendant to deliver drugs to purchasers. J.A. 173-174, J.A. 176, J.A. 180. He saw firsthand how Defendant trafficked narcotics from their apartment and knew of the plans to sell the firearms in New Jersey. *See* J.A. 179-81, J.A. 278, ¶ 13. Defendant argues that his brother's testimony is unreliable because he changed details of the testimony in later conversations with officers. Brief at 11-12. However, his brother has consistently stated that Defendant possessed the firearms and trafficked narcotics for a period of months prior to the sweep on March 28, 2017. J.A. 180, J.A. 278, ¶¶ 13-15. Further, the physical evidence found during the search supports Defendant's involvement in drug dealing. Officers located a digital scale with white powder residue that field-tested positive for cocaine, sandwich bags, some tinfoil, and latex gloves. J.A. 74. In addition to this paraphernalia, officers also discovered over \$9,000 in cash. J.A. 292, ¶ 6. Defendant was unemployed, and, according to Christopher, selling drugs was his sole source of income. J.A. 181, J.A. 292, ¶ 6. Therefore, the evidence of drug dealing described by Defendant's brother is reliable.

3. In Any Event, the Evidence of Defendant's Guilt Was Overwhelming.

Even if this Court finds the 404(b) evidence to be erroneously admitted, it will not reverse if the error was harmless. *United States v. Weaver*, 282 F.3d 302,

313-14 (4th Cir. 2002). This Court determines that an error is harmless if “[the panel] can say with fair assurance, . . . that the judgment was not substantially swayed by the error.” *United States v. Wilson*, 624 F.3d 640, 652 (4th Cir. 2010). Because the burden falls on the Government to prove that an error was harmless, the court evaluates the “overall strength of the government’s evidence.” *Brown*, 765 F. App’x at 907. If “clear and overwhelming” evidence of Defendant’s guilt exists, then the court will deem the error harmless. *Id.*

Here, the evidence of Defendant’s drug dealing did not “substantially” alter the judgment because the evidence of Defendant’s possession of a firearm as a felon was “convincing and overwhelming.” *Brown*, 765 F. App’x at 907. When officers arrived to search his residence, there was an unexplained delay before Defendant opened the door. J.A. 52. In an apparent effort to distance himself from the firearms, Defendant hid them under the air mattress used by his brother when he stayed over, and he locked the door. J.A. 55-58, J.A. 220. Still, when officers searched Defendant’s back bedroom, they located a box of .380 caliber ammunition specifically designed for use in the special Smith & Wesson Body-guard handgun. J.A. 68-73. Defendant was the only occupant home during the search, and when he was questioned about the firearms by Officer Moore, he immediately claimed that his brother owned all the firearms. J.A. 75-76. However, as officers later discovered, Defendant had texted his brother, “[t]hey’re under the bed gun” before the search, letting his brother know where he hid the

weapons. J.A. 117. Even after both brothers were in custody, Defendant continued to talk about the firearms charges he faced. He asked Christopher to “take the gun charge,” and Christopher refused. J.A. 278, ¶ 13.

Furthermore, trial testimony and video from Defendant’s cellular device confirmed that Defendant in fact possessed the firearms. Defendant’s brother testified that he saw the defendant with the handgun “on him” regularly, and he also witnessed the transaction where Defendant obtained the guns from a narcotics supplier over a month before the probation officer’s sweep. J.A. 179-180. Additionally, when officers searched Defendant’s and his brother’s cellular devices, they found video which showed Defendant holding the AR-15 rifle in the front bedroom of the apartment. J.A. 192-93; *See* J.A. 123-125. In the video, Defendant was seen swinging the rifle and made threats, including that he would “send [his] little brother after you.” J.A. 204, J.A. 240. Christopher identified the weapon in the video as the AR-15 rifle seized by ATF agents during the search. J.A. 204. Because the government produced overwhelming evidence of Defendant’s guilt of possession of a firearm by a felon, the error was harmless and did not substantially alter the judgment.

Applicant Details

First Name	Rachel
Last Name	Lefkowitz
Citizenship Status	U. S. Citizen
Email Address	rel7833@nyu.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>8200 Langbrook Road</div> <div>City</div> <div>Springfield</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>22152</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	5713276863

Applicant Education

BA/BS From	University of Virginia
Date of BA/BS	May 2021
JD/LLB From	New York University School of Law
	https://www.law.nyu.edu
Date of JD/LLB	May 24, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Review of Law and Social Change
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Hertz, Randy

hertz@nyu.edu

212-998-6434

Yoshino, Kenji

kenji.yoshino@nyu.edu

212-998-6421

Liebert, Rachael

rbl258@nyu.edu

617-721-8008

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Rachel Lefkowitz
110 West 3rd Street
New York, NY, 22012

June 12, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year student at New York University School of Law, and I write to apply for a clerkship in the judge's chambers for the 2024-25 term. As I am from Virginia, I would welcome the opportunity to return home to clerk for you, especially since I have a specific interest in working in that area long-term and hope to establish professional roots there. In addition, I would welcome the opportunity to learn from your experience not only as a judge, but also as a former federal prosecutor, a career I plan to pursue.

One of my greatest strengths is persevering despite facing extreme adversity. I have a permanent physical disability that requires full-time use of a powered wheelchair and causes severe muscle weakness. Yet I am able to prevail with accommodations and by communicating with others about my needs. As chair of the Disability Allied Law Students Association, I advocate for students in the law school who have disabilities or require accommodations. In addition, as the Community Education and Accessibility Coordinator of the Review of Law and Social Change, I work with students to come up with creative solutions for their accessibility needs so that they can fully contribute to the journal. My unique personal experience of having a disability has given me a valuable perspective that I can bring to my work as a clerk.

I am enclosing my resume, a writing sample prepared for my Criminal Procedure Simulation class, law school transcript, and three letters of recommendation from NYU Law Professors Hertz, Yoshino, and Liebert. Vice Dean Randy Hertz taught my Criminal Law and Criminal Procedure Simulation class. Professor Kenji Yoshino taught my Leadership, Diversity and Inclusion Simulation course. Professor Rachael Liebert taught my lawyering class during my 1L year, and she is now the Program Manager at Sixth Amendment Center. Below please find their contact information:

Vice Dean Randy Hertz: 212-998-6434 and randy.hertz@nyu.edu
Professor Kenji Yoshino: 212-998-6421 and YoshinoK@mercury.law.nyu.edu
Professor Rachael Liebert: 617-721-8008 and rachael.liebert@6ac.org

I hope to have the opportunity to speak with you and can be reached by phone at 571-327-6863 or email at rel7833@nyu.edu. Thank you for your consideration.

Respectfully,
/s/ Rachel Lefkowitz
Rachel Lefkowitz

RACHEL E. LEFKOWITZ

(571) 327-6863
rel7833@nyu.edu

Local Address
110 West 3rd Street
New York, NY 10012

Permanent Address
8200 Langbrook Road,
Springfield, Virginia 22152

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Candidate for J.D., May 2024

Honors: *Review of Law & Social Change*, Community Education and Accessibility Coordinator
Activities: Disability Allied Law Students Association, Chair
Domestic Violence Advocacy Project, Student Volunteer
Law Women & Women of Color Collective, Member
Meltzer Center for Diversity, Inclusion, and Belonging, Student Fellowship, Fall 2023
South Asian Law Students Association, Member
Teaching Assistant for Lawyering, 2022-23

UNIVERSITY OF VIRGINIA, Charlottesville, VA

B.A. Double major in English and Women, Gender & Sexuality, *with distinction* (GPA 3.91), May 2021

Honors: Phi Beta Kappa Honors Society, Member
Commonwealth Award from Sociology Undergraduate Program, May 2020
Activities: Cavalier Daily Newspaper, Writer

EXPERIENCE

KELLEY DRYE & WARREN LLP, New York, NY

Summer Associate, Summer 2023

UNITED STATES ATTORNEY'S OFFICE, E.D.N.Y., Brooklyn, NY

Legal Extern, Fall 2022

Drafted prosecution memoranda for matters involving child pornography, smuggling goods, and Hobbs Act robbery. Prepared historical cellsite data warrant, superseding indictment, and grand jury script for a directed exam. Participated in all aspects of a witness retaliation trial, including investigating defendant's jail calls, and researching substantive and procedural issues.

MERCER COUNTY PROSECUTOR'S OFFICE, Trenton, NJ

Summer Intern, June 2022-July 2022

Conducted research regarding a post-conviction relief petition. Compiled research into cohesive legal brief in opposition to Defense Counsel's brief. Investigated facts of cases and drafted indictments listing. Composed reference guide of cases involving instances where 404(b) evidence was permitted for sexual offenses and gang affiliation.

SEXUAL ASSAULT RESOURCE AGENCY, Charlottesville, VA

Hotline Volunteer, March 2020-October 2022

Provide crisis intervention by offering caring, reliable, empathetic advice. Serve as an immediate response to survivors of sexual assault at the time the support was needed. Direct survivors to resources and possible next steps.

WORKER'S RIGHTS CLINIC, Washington, DC

Intake Volunteer, July-September 2020

Interviewed workers over the phone about their employment related issues at work. Reviewed information with experienced employment attorney and discussed legal advice and brief services assistance. Conveyed advice from attorney back to worker about possible next steps.

ADDITIONAL INFORMATION

Additional experience managing and supervising 20-30 employees who served as my personal care attendants (August 2017-March 2020). English tutor to 11-12-year-old students (March-May 2020).

Name: Rachel E Lefkowitz
 Print Date: 05/31/2023
 Student ID: N13259967
 Institution ID: 002785
 Page: 1 of 1

New York University
 Beginning of School of Law Record

	<u>AHRS</u>	<u>EHRS</u>
Current	15.0	15.0
Cumulative	45.0	45.0

Fall 2021

School of Law Juris Doctor Major: Law				
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor: Rachael B Liebert				
Criminal Law		LAW-LW 11147	4.0	B+
Instructor: Randy Hertz				
Procedure		LAW-LW 11650	5.0	A
Instructor: Arthur R Miller				
Contracts		LAW-LW 11672	4.0	B+
Instructor: Kevin E Davis				
1L Reading Group		LAW-LW 12339	0.0	CR
Instructor: Claudia Angelos				
Jason D Williamson				
	<u>AHRS</u>	<u>EHRS</u>		
Current	15.5	15.5		
Cumulative	15.5	15.5		

Spring 2023

School of Law Juris Doctor Major: Law				
Criminal Procedure: Post-Conviction Simulation		LAW-LW 10675	4.0	A-
Instructor: Randy Hertz				
Examining Disability Rights and Centering		LAW-LW 10983	2.0	A-
Disability Justice				
Instructor: Prianka Nair				
Evidence		LAW-LW 11607	4.0	A
Instructor: Daniel J Capra				
Teaching Assistant		LAW-LW 11608	2.0	CR
Instructor: Eric O Bravin				
Leadership, Diversity, and Inclusion Seminar		LAW-LW 12449	2.0	A-
Instructor: Kenji Yoshino				
Gabriel Y Delabra				
	<u>AHRS</u>	<u>EHRS</u>		
Current	14.0	14.0		
Cumulative	59.0	59.0		

Spring 2022

School of Law Juris Doctor Major: Law				
Constitutional Law		LAW-LW 10598	4.0	B+
Instructor: Melissa E Murray				
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor: Rachael B Liebert				
Legislation and the Regulatory State		LAW-LW 10925	4.0	B
Instructor: Adam M Samaha				
Torts		LAW-LW 11275	4.0	B+
Instructor: Catherine M Sharkey				
1L Reading Group		LAW-LW 12339	0.0	CR
Instructor: Claudia Angelos				
Jason D Williamson				
Financial Concepts for Lawyers		LAW-LW 12722	0.0	CR
	<u>AHRS</u>	<u>EHRS</u>		
Current	14.5	14.5		
Cumulative	30.0	30.0		

Fall 2022

School of Law Juris Doctor Major: Law				
Prosecution Externship - Eastern District		LAW-LW 10103	3.0	CR
Instructor: Alixandra Smith				
Erin Reid				
Prosecution Externship - Eastern District		LAW-LW 10355	2.0	A-
Seminar				
Instructor: Alixandra Smith				
Erin Reid				
Professional Responsibility and the Regulation		LAW-LW 11479	2.0	A
of Lawyers				
Instructor: Geoffrey P Miller				
European Human Rights Law		LAW-LW 11601	2.0	A
Instructor: Helene Tigroudja				
Property		LAW-LW 11783	4.0	B+
Instructor: Cynthia L Estlund				
Leadership, Diversity, and Inclusion Seminar		LAW-LW 12449	2.0	A-
Instructor: Kenji Yoshino				
Gabriel Y Delabra				

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	All other JD and LLM (Non-Mandatory)
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	Maximum for A tier = 31%
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	Maximum grades above B = 57%
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

<i>Pomeroy Scholar:</i>	Top ten students in the class after two semesters
<i>Butler Scholar:</i>	Top ten students in the class after four semesters
<i>Florence Allen Scholar:</i>	Top 10% of the class after four semesters
<i>Robert McKay Scholar:</i>	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021

May 15, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Rachel Lefkowitz for a clerkship.

In her first semester of law school, Rachel was in my 1L Criminal Law course. The grade she received in the course, which was a B+, was based entirely on the exam. If the grade factored in class participation, it would have been much higher. Rachel participated actively in class and came regularly to office hours sessions. Her comments in both settings were highly thoughtful.

In the spring semester of her second year, Rachel was in my "Criminal Procedure: Arraignment to Postconviction" course. The course is mostly taught in seminar-style form but there are also in-class simulation exercises that give students the opportunity to use the legal doctrines and procedural rules they're studying and to do so in role. The written work for the course consists of two papers: a memorandum of points and authorities in a simulated federal criminal case, using Federal Rule of Evidence 609(a) and federal court caselaw to argue (as prosecution or defense) whether a defendant's prior conviction is available for use in prosecutorial cross-examination of the defendant if he chooses to take the witness stand at trial; and a simulated internal memo to the head of a capital defender office, analyzing what claims can be brought in state postconviction and federal habeas corpus and how to overcome the procedural bars stemming from the prior defense lawyers' failures to preserve the issues at trial and on direct appeal.

Rachel did an excellent job in all aspects of the course, and she received a grade of A-. In the seminar-style discussions of legal doctrines and key cases, she participated actively in class and made insightful comments. In the in-class simulation exercises, she demonstrated great creativity and excellent judgment. In the written memos, she did first-rate research and used the authorities to analyze the legal, factual, and strategic issues in a comprehensive and cogent manner. She made excellent choices about which of the potentially available arguments to make and which to forego; framed her arguments in the most persuasive way; and dealt carefully and appropriately with the counter-arguments likely to be raised by the other side.

I believe that the qualities I have observed in Rachel – her intelligence; first-rate skills of researching and writing; thoughtfulness; and good judgment – would enable her to do an excellent job as a law clerk.

Sincerely,

Randy Hertz

Randy Hertz - hertz@nyu.edu - 212-998-6434



KENJI YOSHINO
Chief Justice Earl Warren Professor of Constitutional Law
Director of the Center for Diversity, Inclusion, and Belonging

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kenji.yoshino@nyu.edu

May 30, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Rachel Lefkowitz, NYU Law '24

Dear Judge Walker:

It's a particular pleasure to recommend Rachel Lefkowitz, a member of NYU School of Law's Class of 2024, for a clerkship in your chambers. I taught Rachel in a year-long seminar titled "Leadership, Diversity, and Inclusion" (LDI) in 2022-23. I therefore feel I know Rachel extremely well and feel confident giving her my highest recommendation.

The LDI class has an enrollment limited to eighteen students each year. It seeks to "boot camp" the class not only on the substance of diversity and inclusion, but also on practical skills such as writing and oral presentations. My co-instructor and I work extremely closely with each of the students.

Rachel distinguished herself in each aspect of this intense class. Her oral presentations were polished and well-researched. Her class participation was pithy and on point. She was a terrific interlocutor for her classmates, often building upon or synthesizing their comments to advance the discussion.

Rachel's most impressive contribution in the course, however, was her written work. She wrote her paper for our course on the amplification of rhetoric in the diversity and inclusion field. She was largely responding to Robin DiAngelo's book *White Fragility*, which we had read as a class. Students have written on this book in past iterations of the course. Rachel's approach was notably different from those of her predecessors.

First, Rachel was able to paint the book in the best possible light, making the work "the best it could be" before turning to critique it. In general, Rachel is excellent at not demonizing her intellectual or ideological opponents. Second, she was able to draw fresh and cogent analogies to the law, showing how some of the debates that DiAngelo identified popular discourse were also being fought out in the case law surrounding civil-rights statutes. Finally, the paper was extremely well written. Perhaps in part due to her undergraduate training as an English major, Rachel has an enviably smooth and readable style.

Any recommendation of Rachel that did not address her personal qualities would be incomplete. Rachel is a cheerful, determined, and passionate person. Because she has a motor disability, she uses a wheelchair and cannot raise her hand in class. I admired her matter-of-fact approach to her disability. She observed to the class in an early session that she could not raise her hand to speak and wanted to clarify that she would be breaking in from time to time. She noted that she was sharing this so that she would not appear to be rude. Where issues of disability came up in the class, she was a quiet and forceful advocate. Indeed, we ended up changing the syllabus for the course to include a book on disability rights due to comments she made in the course. I now consider this to be a permanent change in the syllabus.

I know Rachel will go far in the law. She had a challenging time interviewing with firms this fall. While she ultimately landed a position, she had many adverse experiences on the market. I admired her unflappable determination, which I know will serve her well in a clerkship and beyond. I think she will be a transformative role model in the disability space, whether she decides to make her substantive contribution there or not.

If I were you, I would not hesitate!

Sincerely,

Kenji Yoshino

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Rachael Liebert
Program Manager
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May 23, 2023

RE: Rachel Lefkowitz, NYU Law '24

Your Honor:

Rachel Lefkowitz is an exceptional law student and will be an outstanding judicial clerk. As Rachel's professor in the first-year Lawyering Program at NYU School of Law, I had an opportunity to observe Rachel both in class and in a variety of simulations that expose students to diverse professional and interpersonal skills. Rachel is an inquisitive and self-motivated student who possess excellent critical thinking and research and writing skills, and who loves to learn for learning's sake. I write to recommend her for a clerkship in the strongest possible terms.

The Lawyering Program, a key part of the first-year JD curriculum at NYU, is a small, year-long, simulation-based course. In this course, students operate within small teams, critique each other's work, and receive detailed feedback on a range of skills, including conducting legal research and factual due diligence, drafting objective memoranda and persuasive briefs, interviewing and counseling clients, and oral advocacy.

Rachel's performance in my class was exemplary. Rachel's written work, including both her predictive memos and her persuasive briefs, reflected comprehensive research and an impressive ability to navigate subtle legal distinctions and details. Rachel entered law school as a strong writer, and quickly took to the specifics of legal analysis and writing, incorporating strong reasoning by analogy, using declarative language, and grounding her argumentation in case law. Rachel often came to office hours to discuss different approaches to structuring legal arguments, and, not satisfied with anything but the best, she routinely experimented with various structures until she found the perfect framework for a given argument.

Rachel also contributed significantly to classroom discussions and simulations. As a person with a physical disability, Rachel added a unique perspective to conversations about the power of the law, and she was particularly attuned to how the law impacts individuals' lived experiences. Rachel also regularly surfaced important issues related to the role of lawyers in broader contextual dynamics, and she created a welcoming environment in which other students felt comfortable sharing their own perspectives. In our client-based simulations, Rachel demonstrated a strong ability to build rapport and empower her clients. For example,

Rachel Lefkowitz, NYU Law '24
May 23, 2023
Page 2

in a simulated interview with a client who faced workplace discrimination, Rachel was able to learn more information than other students because of the bond that she formed with the client. Given Rachel's outstanding contributions to class and simulations, I selected Rachel to be a Teaching Assistant for the Lawyering Program during her second year of law school, and I know that the Lawyering Program has benefited greatly from her involvement.

On a more personal note, Rachel is a pleasure to work with and will make an excellent colleague. Rachel has always taken advantage of opportunities to meet with me one-on-one for mentorship and career advice, and I have delighted in watching her gain confidence as an aspiring lawyer and find new ways to advocate for others. Rachel is thoughtful, mature, and conscientious, and I am confident that she will thrive in the intimate setting of a judge's chambers.

If selected for a judicial clerkship, Rachel will provide excellent service to the Court, take full advantage of the learning opportunities afforded to clerks, and use her position to help elevate others whose backgrounds are, like hers, less commonly reflected in the legal profession. I recommend Rachel for a clerkship in the strongest possible terms. If I can be of any further assistance in your deliberations, please do not hesitate to contact me at rbl258@nyu.edu or 617-721-8008.

Sincerely,



Rachael Liebert

WRITING SAMPLE OF RACHEL LEFKOWITZ
NEW YORK UNIVERSITY SCHOOL OF LAW
J.D. CLASS OF 2024

[My writing sample is a memorandum of points and authorities in support of the defendant's motion *in limine* to exclude the prior conviction of willfully injuring government property. This writing sample is entirely my own work, without edits from anyone else, therefore, this draft was completed before I received any oral or written feedback from anyone.]

U.S. v. Davis
Memorandum of Points and
Authorities in Support of the
Defendant's Motion *In Limine* to
Exclude the Prior Conviction
Criminal Procedure Assignment

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF
PENNSYLVANIA

-----	X	MEMORANDUM OF POINTS
UNITED STATES OF AMERICA]	AND AUTHORITIES IN SUPPORT
]	OF THE DEFENDANT'S
v.]	MOTION <i>IN LIMINE</i> TO
]	EXCLUDE THE PRIOR
DANIEL DAVIS,]	CONVICTION
]	No. 18,493 CRIM.
Defendant]	
-----	X	

ARGUMENT

I. The court should declare defendant's prior conviction inadmissible as impeachment evidence under Rule 609(a)(1), in the event he chooses to testify at trial.

The crime that Mr. Davis was convicted of is willfully injuring government property in violation of Section 1361 of Title 18, United States Code, by breaking the latches of the doors of postal boxes set into the exterior wall of the US post office. Prior Conviction Indictment ¶¶ 1-6. The amount of damage to the said doors exceeded the sum of \$1000 such that the offense was punishable by a maximum sentence of 10 years in prison. *Id.* Pursuant to the Federal Rules of Evidence, the credibility of a witness may be impeached by evidence of prior convictions if the prior conviction was for a felony. Fed. R. Evid. 609(a)(1). Here, the prior offense was punishable by more than one year of imprisonment, thus the conviction satisfies 609(a)(1). However, when the testifying witness is the defendant, the prior conviction must be admitted in a criminal trial only "if the probative value of the evidence outweighs its prejudicial effect to that defendant." Fed. R. Evid. 609(a)(1). The Third Circuit has outlined four factors to determine whether the probative value of a past conviction outweighs its prejudicial effect under Rule 609(a)(1): "(1) the kind of crime involved; (2) when the conviction occurred; (3) the importance of the witness's testimony to the case; [and] (4) the importance of the credibility of the defendant." *Gov't of V.I. v. Bedford*, 671

F.2d 758, 761 (3d Cir. 1982). The Third Circuit has held that Rule 609(a)(1) "reflects a heightened balancing test" with a "predisposition toward exclusion" and that "[a]n exception [to exclusion of the evidence] is made only where the prosecution shows that the evidence makes a tangible contribution to the evaluation of credibility and that the usual high risk of unfair prejudice is not present." *United States v. Jessamy*, 464 F. Supp. 3d 671, 675 (M.D. Pa. 2020). In the instant case, the four Bedford factors taken together weigh against admitting the prior conviction as the probative value of the evidence does not outweigh its prejudicial effect to the defendant. Therefore, the *in limine* motion to preclude the prosecution from using the defendant's prior conviction to impeach him under Rule 609(a)(1) in the event he chooses to testify at trial should be granted.

A. The first Bedford factor weighs in favor of excluding the prior conviction.

When considering the first Bedford factor regarding the kind of crime involved, "courts consider both the impeachment value of the prior conviction as well as its similarity to the charged crime." *United States v. Caldwell*, 760 F.3d 267, 286 (3d Cir. 2014). "The impeachment value relates to how probative the prior conviction is to the witness's character for truthfulness." *Id.* "When considering this factor, 'the court asks whether the past conviction involved dishonesty, false statements, or any other offense in the nature of *crimen falsi*.'" *United States v. Guerrier*, 511 F. Supp. 3d 556, 562 (M.D. Pa. 2021) (citing *Walker v. Horn*, 385 F.3d 321, 334 (3d Cir. 2004)). The phrase "dishonesty and false statement" refers to crimes such as perjury or subornation of perjury, false statement, criminal fraud, embezzlement, or false pretense, the commission of which involves some element of deceit, untruthfulness, or falsification bearing on the accused's propensity to testify truthfully. *Cree v. Hatcher*, 969 F.2d 34, 37 (3d Cir. 1992). Crimes such as robbery, larceny, and theft have been found to reflect dishonesty on the part of the witness and are thus considered to be more probative of truthfulness. *United States v. Smith*, 2006 U.S. Dist. LEXIS 9692, at *2 (E.D. Pa. Mar. 13, 2006); see *United States v. Fromal*, 733 F. Supp. 960, 973

(E.D. Pa. 1990) ("The crime of larceny has been held in this district to involve dishonesty, as has robbery."); *Caldwell*, 760 F.3d at 286 ("[C]rimes that by their nature imply some dishonesty, such as theft, have greater impeachment value and are significantly more likely to be admissible.").

With respect to the similarity of the crime to the offense charged, the “balance tilts further toward exclusion as the offered impeachment evidence becomes more similar to the crime for which the defendant is being tried.” *Caldwell*, 760 F.3d at 286. There is a heightened risk of prejudice if the witness is the defendant and the crime committed in the past is similar to the crime now charged, “‘since this increases the risk that the jury will draw an impermissible inference’ that the defendant committed the present offense because he or she committed the prior offense.” *United States v. Dubose*, 2022 U.S. Dist. LEXIS 203026, at *20 (E.D. Pa. Nov. 8, 2022) (quoting *Caldwell*, 760 F.3d at 286).

The crime that Daniel Davis (“Mr. Davis”) was convicted of is willfully injuring government property by breaking the latches of the doors of postal boxes set into the exterior wall of the US post office. Prior Conviction Indictment ¶¶ 1-4. The crime of willfully injuring government property does not by its nature imply some dishonesty, so the crime has less impeachment value, and it is less probative of truthfulness. *Caldwell*, 760 F.3d at 286. In the instant case, Mr. Davis has been charged with unlawfully taking a Social Security check from a letter box, mail receptacle, or authorized depository for mail matter, possessing the stolen check, forging the stolen check, and passing the stolen check. Pending Indictment ¶ 1-4. Additionally, in the fact pattern of the instant case, the door of the mailbox, where the check was stolen from, had been pried open and the latch was broken, which maps onto Mr. Davis’s prior conviction quite closely. Davis Aff. ¶ 5. The crime of willfully injuring government property by breaking the doors of postal boxes is almost identical to the fact pattern of the current case and the prior conviction is so similar

to the offenses charged against Mr. Davis that it requires exclusion. *Caldwell*, 760 F.3d at 286. Both the prior conviction and the alleged offenses are related to postal boxes such that this similarity “increases the risk that the jury will draw an impermissible inference” that Mr. Davis committed the present offense because he committed the prior offense. *Id.* Therefore, the kind of crime involved in the prior conviction weighs in favor of excluding the conviction as there is less probative value since the crime did not have an element of deceitfulness, and the similarity of the crime to the current offenses are so similar that it will be unduly prejudicial to the defendant if the prior conviction is admitted.

B. The second Bedford factor weighs in favor of excluding the prior conviction.

The second Bedford factor refers to the age of the conviction. Older convictions tend to have a greater prejudicial effect because they have less probative value. *Dubose*, 2022 U.S. Dist. LEXIS 203026, at *20-21; *see United States v. Paige*, 464 F. Supp. 99, 100 (E.D. Pa. 1978) (holding that a longer length of time between a conviction and trial lessened its probative value). If less than ten-years have passed since the witness's conviction or release from confinement, the conviction is generally admitted because the more recent a conviction is, the more likely it affects a defendant’s credibility. *United States v. Murphy*, 172 F. App'x 461, 464 (3d Cir. 2006) (holding that when only three and four years have passed since the conviction, this weighs in favor of admitting the crime); *Diaz v. Aberts*, No. 10-5939, 2013 U.S. Dist. LEXIS 74373, at *26 (E.D. Pa. May 28, 2013) (finding that defendant’s prior convictions occurred within approximately the last four years, and that recency weighed in favor of admission). But even where the conviction is not subject to the ten-year restriction, “the passage of a shorter period can still reduce [a prior conviction's] probative value.” *Caldwell*, 760 F.3d at 287. The age of a conviction may weigh particularly in favor of exclusion “where other circumstances combine with the passage of time to suggest a changed character.” *Id.* “For example, a prior conviction may have less probative value

where the defendant-witness has maintained a spotless record since the earlier conviction or where the prior conviction was a mere youthful indiscretion.” *Id.*

Mr. Davis’s prior conviction occurred six and a half years ago on December 31, 2016, so it is not subject to the ten-year restriction excluding the conviction. Prior Conviction Indictment ¶¶ 1-6. However, “other circumstances combine with the passage of time to suggest a change in character” because Mr. Davis “has maintained a spotless record since the earlier conviction” six and a half years ago and the conviction occurred when he was only twenty-three years old such that “the prior conviction was a mere youthful indiscretion.” *Caldwell*, 760 F.3d at 287. After Mr. Davis completed his sentence of fifteen months of probationary supervision, he was discharged from it without further incident and this conviction was his only previous brush with the law. Sentencing Agreement ¶¶ 4-6. Thus, this factor weighs in favor of excluding the prior conviction because the conviction has less probative value compared to its highly prejudicial effect.

C. The third Bedford factor weighs in favor of excluding the prior conviction.

“The third factor inquires into the importance of the defendant's testimony to his defense at trial.” *Caldwell*, 760 F.3d at 287. “A defendant's decision about whether to testify may be based in part on whether his prior convictions will be admitted for impeachment purposes.” *Id.* Thus, the strategical need for the defendant to testify on his or her own behalf to demonstrate the validity of their defense may weigh against the admission of a prior conviction. *Id.* “If it is apparent to the trial court that the accused must testify to refute strong prosecution evidence, then the court should consider whether, by permitting conviction impeachment, the court in effect prevents the accused from testifying.” *Id.*; *Jessamy*, 464 F. Supp. 3d at 676 (noting that defendant’s testimony is important in refuting the government's strong evidence, including testimony of witnesses). If the defendant's testimony may be fundamentally important to his defense, then this counts in favor of excluding the prior conviction. *Guerrier*, 511 F. Supp. 3d at 565 (observing that when the

defendant has denied that he has engaged in any of the criminal conduct with which he is presently charged and when the jury will be asked to choose between the defendant's version of events and that provided by the government witnesses, this factor weighs against admitting the conviction). "If, on the other hand, the defense can establish the subject matter of the defendant's testimony by other means, the defendant's testimony is less necessary, so a prior conviction is more likely to be admitted." *Caldwell*, 760 F.3d at 288; *see also United States v. Causey*, 9 F.3d 1341, 1344 (7th Cir. 1993) (finding that defendant "did not obviously need to testify to raise his various defenses" because several other defense witnesses provided the same testimony).

Mr. Davis maintains his innocence of all the charges and the jury will be asked to choose between Mr. Davis's version of events and that provided by the government witnesses. Davis Aff. ¶ 6. Therefore, Mr. Davis's testimony is fundamentally important to his defense. *Guerrier*, 511 F. Supp. 3d at 565. The prosecution has strong evidence against Mr. Davis, including testimony from five witnesses indicating that he stole the Social Security check on July 1, 2022, and cashed that same check on July 5, 2022. Davis Aff. ¶ 5. Vivian Vincent ("Ms. Vincent"), the complainant, will testify to the following things that happened on July 1 that led her to believe that Mr. Davis stole her check before 10 AM that day when she checked her mailbox: she heard suspicious noises coming from Mr. Davis's apartment at around 8:30 or 9 AM, Mr. Davis did not go to work by 8 AM like he usually does, and at 6 PM Mr. Davis ignored her salutation and suspiciously ran up the stairs to his apartment, at which point she remembered that she had mentioned to Mr. Davis several times before that she received Social Security. *Id.* ¶ 4. Emma Ployee, an employee of the Social Security Administration, will testify to records from her office which show that a Social Security check for \$643.28 was in fact mailed to Ms. Vincent on June 29, 2022, so the disappearance of the check is not their fault. *Id.* Gordon Krantz ("Mr. Krantz"), a mail carrier

whose route includes Ms. Vincent's Street, will testify that he delivered the mail between 9:25 and 9:45 AM on July 1. *Id.* ¶ 4-5. John Nolan, an officer with the Philadelphia Police Department, will testify to the condition of Ms. Vincent's mailbox when he arrived at 10:20 AM on July 1 indicating that someone broke into the mailbox. *Id.* ¶ 5. Boris Smirnoff ("Mr. Smirnoff"), a salesclerk at a liquor store in Bensalem, Pennsylvania, will testify that he cashed Ms. Vincent's check there on the evening of July 5, from an individual named Alex Lias, whom he later identified as Mr. Davis from a police lineup. *Id.* ¶ 5-6. Bruce Springstein, the boss at the radiator plant where Mr. Davis works, will testify that Mr. Davis punched in at the time clock at 12 PM on July 1 and then punched out at 5:30 PM. *Id.* ¶ 6.

Mr. Davis is the only witness who can testify that the suspicious noises that Ms. Vincent heard at approximately 8:30 or 9 AM on July 1 came from his injured dog after the dog got hurt on their walk, the only one who can testify why he did not go to work by 8 AM on July 1 like he usually does but instead punched in at 12 PM, and the only witness who can testify to the encounter he had with Ms. Vincent at 6 PM on July 1 so as to refute his alleged suspicious behavior. *Id.* ¶ 3-4. Mr. Davis is also the only one who can refute that he tampered with the mailbox on July 1. *Id.* ¶ 5. Lastly, Mr. Davis is the only witness who can testify that he has never been to the liquor store in Bensalem where Ms. Vincent's check was cashed by Mr. Smirnoff on July 5, that he was at home alone that evening, and that nothing happened on July 5 which would give him a reason to specifically recall it. *Id.* ¶ 7. As Mr. Davis cannot establish the subject matter of his testimony by other means, his testimony is even more necessary "to refute strong prosecution evidence." *Caldwell*, 760 F.3d at 287-88. There is a greater need for Mr. Davis to testify on his own behalf to demonstrate the validity of his defense which weighs against the admission of the prior conviction. *Guerrier*, 511 F. Supp. 3d at 565.

D. The fourth Bedford factor weighs in favor of excluding the prior conviction.

The fourth and final Bedford factor concerns the significance of the defendant's credibility to the case. *Caldwell*, 760 F.3d at 288. "When the defendant's credibility is a central issue, this weighs in favor of admitting a prior conviction." *Id.*; see *United States v. Johnson*, 302 F.3d 139, 153 (3d Cir. 2002) (affirming the admission of a prior conviction under Rule 609(a) because the defendant's credibility was important); *United States v. Bianco*, 419 F. Supp. 507, 509 (E.D. Pa. 1976) (finding that evidence of defendant's prior convictions is relevant to attack the defendants' credibility). "Where a case is reduced to a swearing contest between witnesses, the probative value of conviction is increased." *Caldwell*, 760 F.3d at 288; *Johnson*, 302 F.3d at 152 (finding that credibility was a major issue at trial because defendant's defense depended on the jury believing his story rather than his co-defendant). Conversely, the probative value of a defendant's prior conviction may be diminished "where the witness testifies as to inconsequential matters or facts that are conclusively shown by other credible evidence." *Caldwell*, 760 F.3d at 288.

The testimony of Mr. Davis will create a "credibility contest between the defendant and the government's witnesses." *Guerrier*, 511 F. Supp. 3d at 565-66. At the preliminary examination, Mr. Smirnoff testified that Daniel Davis "looked like" the man who had presented Ms. Vincent's check under the name Alex Lias on July 5 and that Mr. Smirnoff "thought he [Mr. Davis] was the man." Davis Aff. ¶ 5. The testimony will create an issue as to whether Mr. Davis was properly identified by Mr. Smirnoff and whether Mr. Davis stole Ms. Vincent's Social Security check from her mailbox. *Guerrier*, 511 F. Supp. 3d at 566. The jury will have to decide between Mr. Davis's version of events and those provided by Mr. Smirnoff, Ms. Vincent, and the other government witnesses. *Jessamy*, 464 F. Supp. 3d at 677. In light of the choice the jury will have to make regarding credibility, Mr. Davis's conviction is likely admissible under this fourth factor.

However, the probative value of Mr. Davis's prior conviction is diminished because he plans on testifying to "inconsequential matters or facts" in support of his alibi defense "that are conclusively shown by other credible evidence." *Caldwell*, 760 F.3d at 288. Mr. Davis's alibi defense is that he had a medical emergency to take care of regarding his pet Doberman on the morning of July 1 that prevented him from being near the scene at the time when Ms. Vincent's check was stolen sometime before 10 AM when she went to check her mailbox. Davis Aff. ¶ 6. Mr. Davis plans on testifying to all of the inconsequential facts that informed his visit to the Germantown Veterinary Emergency Clinic: how his dog got hurt during their usual walk, what led Mr. Davis to seek out professional treatment, the search he conducted to find a veterinary clinic, the travel time it took to arrive at the clinic, the paperwork he had to complete, and the treatment his dog received at the clinic as well as the time that the entire process took. *Id.* ¶ 6-7. However, Mr. Davis has other witnesses and records from the Germantown Veterinary Emergency Clinic in support of his alibi defense. *Id.* ¶ 7. He has the clinic's business records showing that he brought an injured Doberman to the clinic and the dog was discharged at 10:50 AM that day. *Id.* The veterinary doctor and receptionist that day will testify that Mr. Davis was in the treatment room the entire time, the process of checking in takes a minimum of five minutes, and the suturing procedure performed by the doctor most probably would have taken longer than fifty minutes and as much as one hour and fifteen minutes. *Id.* Lastly, a licensed professional investigator who drove the six miles between Mr. Davis's apartment and the Germantown Veterinary Emergency Clinic has ascertained that the most reasonable estimate for a one-way trip given traffic conditions on a weekday morning is twenty minutes. *Id.* ¶ 8. If the procedure took an hour, the visit to the clinic from the time of discharge would have taken at a minimum an hour and twenty-five minutes, meaning he had to have left his apartment for the clinic at 9:25 AM the latest, which is before the

check was even delivered by Mr. Krantz, so Mr. Davis could not have stolen the Social Security check. *Id.* ¶ 4-5. Mr. Davis's credibility is an issue in the case which tends to weigh in favor of admitting his prior conviction. However, the inconsequential events Mr. Davis planned on testifying to in support of his alibi defense are conclusively proven by witnesses and records from the clinic, so the prior conviction loses its probative value, thus the credibility of the defendant weighs against admitting the prior conviction.

II. The court should declare defendant's prior conviction inadmissible as impeachment evidence under Rule 609(a)(2), in the event he chooses to testify at trial.

Pursuant to Rule 609(a)(2), "for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement." Fed. R. Evid. 609(a)(2). The Third Circuit has held "that a crime must involve expressive dishonesty to be admissible under Rule 609(a)(2)." *Walker*, 385 F.3d at 334. "The proper test for admissibility under Rule 609(a)(2) does not measure the severity or reprehensibility of the crime, but rather focuses on the witness's propensity for falsehood, deceit or deception." *Cree*, 969 F.2d at 38. Once the court "determines that a crime involves dishonesty or false statement, evidence of conviction of that crime *automatically* becomes admissible for impeachment purposes." *United States v. Hans*, 738 F.2d 88, 94 (3d Cir. 1984). In the present case, the operative question is whether a conviction for willfully injuring government property is a crime that involves dishonesty or false statement. Willfully injuring government property has no element that implies any form of falsehood or deception. *See* 18 U.S.C. § 1361. So, the prior conviction is inadmissible for impeachment purposes under 609(a)(2) for attacking Mr. Davis's credibility as the crime does not establish his propensity for deceit. Therefore, the *in limine* motion to exclude the defendant's prior conviction under Rule 609(a)(2) should be granted.

Applicant Details

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 Last Name **Lehman**
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Applicant Education

BA/BS From **Cornell University**
 Date of BA/BS **May 2012**
 JD/LLB From **The University of Michigan Law School**
<http://www.law.umich.edu/currentstudents/careerservices>
 Date of JD/LLB **May 3, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Michigan Journal of International Law**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Campbell Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/
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 Post-graduate Judicial
 Law Clerk **No**

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a second-year law student at University of Michigan Law School, and I am writing to apply to clerk for you for the 2024-2025 term. I am interested in a federal district clerkship because after clerking, I hope to pursue a career as a government litigator, either as a federal prosecutor or on the civil side.

Prior to Law School, I worked in credit card analytics, first at Capital One, and then at Verisk Financial, an analytic consulting firm. I developed three critical skills in this work. First, I learned to tailor my presentations to the concerns and experience of my audience, adapting my material for internal technical audiences and senior executives at our clients. Second, I refined a meticulous attention to detail, because I was often the last layer of internal review before our recommendations were shared with our customers. Finally, I learned to pace myself and prioritize, working to meet my deadlines without burning out.

Developing my legal research and writing skills has been my top priority during my first two years at Michigan Law. Last Spring, I wrote a blog post for the Michigan Journal of Environmental and Administrative Law on the constitutional issues associated with agency delegation to private entities. During my Summer at the U.S. Attorney's Office, I continued to hone my legal skills, writing short memos for sentencing, opposing suppression of evidence, and defending expert testimony. In the Fall, I wrote an eighteen-page essay exploring how structural factors in governance have impeded effective regional transit in Southeast Michigan, as well as a Campbell Moot Court brief. During my Summer internship with the Department of Justice in their Tax Division, I expect to have the opportunity to develop substantive expertise, as well as to practice writing longer, more nuanced briefs.

In addition to the requested documents, I have included with my resume a letter explaining Michigan's class ranking policy.

Thank you for your consideration.
Sincerely,
Benjamin Lehman

Benjamin Lehman

3085 Wolverine Drive, Ann Arbor, MI 48108
734-395-0319 • benjamle@umich.edu
He/Him

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, MI
Expected May 2024

Juris Doctor 3.826 (historically top 10 %)
Journal: Managing Executive Editor, *Michigan Journal of International Law*
Honors: Certificate of Merit: Torts, Civil Procedure
Clinic: Child Advocacy Law Clinic
Activities: Treasurer, *Older Wiser Law Students*
Packet Design Team, *1L Oral Advocacy Competition*
Volunteer, *Clean Slate (Expungement) Project*, *Michigan Advocacy Program*

CORNELL UNIVERSITY

Ithaca, NY
May 2013
May 2012

Masters of Engineering in Systems Engineering
Bachelor of Science in Civil and Environmental Engineering
Activities: President, Ring of Steel Ithaca (Fight Choreography and Stunt Performance Troupe)
Treasurer, Risley Residential College

EXPERIENCE

DEPARTMENT OF JUSTICE, TAX DIVISION

Washington, DC
May -August 2023

Summer Legal Intern (SLIP)

UNITED STATES ATTORNEY'S OFFICE NORTHERN DISTRICT OF OHIO

Toledo, OH
June 2022-August 2022

Summer Legal Intern

- Drafted Sentencing Memos for a variety of criminal charges, including gun possession and child pornography
- Analyzed criminal history of Defendants for applicability of sentencing enhancements
- Wrote Motion to Dismiss in civil case about Rail Labor Act
- Researched and wrote responsive memoranda to Motions to Suppress and to Dismiss

VERISK ANALYTICS

White Plains, NY
August 2018-August 2021

Manager, Analytics

- Developed and presented new Powerpoint reports and analyses to help banking clients understand the impact of COVID on their partners and customers
- Scheduled team meetings and planned morale-boosting activities, both virtually and in-person
- Managed two junior associates, developing their technical, leadership, and presentational skills through practice presentations and monthly development check-ins

CAPITAL ONE FINANCIAL

Richmond, VA
August 2015-August 2018

Senior Data Analyst (Full Time)

- Coordinated shift of data to a new platform, understanding internal client needs and translating them into requirements for the tech teams to prevent any interruption in the work

Data Analyst (Full Time)

July 2013-August 2015

- Designed and created performance monitoring reports in Excel and Powerpoint for new Customer Management Products

ADDITIONAL

Languages: French (Moderate), German (Basic)

Interests: Political History, Strategy Games, Walking (5-10 miles)



Rashida Y. Douglas

Registrar; Director

Office of Student Records, 300 Hutchins Hall

625 S. State Street, Ann Arbor, MI 48109-1215

Phone: 734.763.6499 | Fax: 734.936.1973

Email: lawrecords@umich.edu

Memo: 2018 - 2022 Class Ranking

To whom it may concern:

The University of Michigan Law School does not rank its current students; however, it does rank graduates upon completion of their degrees. As the GPAs that correspond to particular percentages do change slightly from year to year, we are providing averages for the graduating classes from the past five academic years (2018 - 2022). Thus, the following information may assist you in evaluating candidates:

- Students with a cumulative GPA of 4.010 and above finished in the top 1%
- Students with a cumulative GPA of 3.941 and above finished in the top 2%
- Students with a cumulative GPA of 3.921 and above finished in the top 3%
- Students with a cumulative GPA of 3.884 and above finished in the top 5%
- Students with a cumulative GPA of 3.820 and above finished in the top 10%
- Students with a cumulative GPA of 3.772 and above finished in the top 15%
- Students with a cumulative GPA of 3.735 and above finished in the top 20%
- Students with a cumulative GPA of 3.700 and above finished in the top 25%
- Students with a cumulative GPA of 3.650 and above finished in the top 33%
- Students with a cumulative GPA of 3.563 and above finished in the top 50%

During the Winter 2020 term, a global pandemic required significant changes to course delivery. All courses used mandatory Pass/Fail grading. Consequently, the students who graduated in the May 2020 term graduated with five semesters of graded courses, rather than six.

A handwritten signature in black ink, appearing to read 'Rashida Y. Douglas'.

Rashida Y. Douglas
Law School Registrar & Director for the Office of Student Records

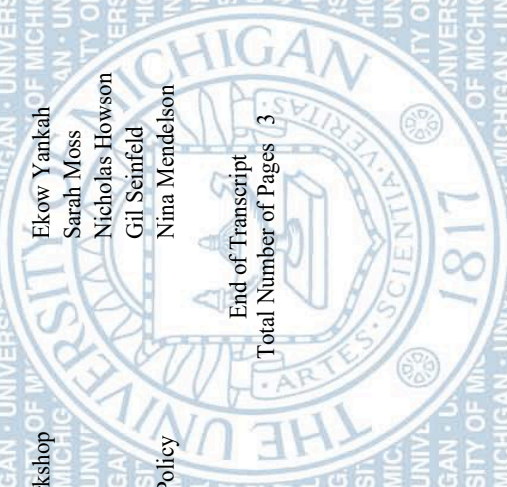
Cumulative Grade Report and Academic Record

University Registrar

Continued next page >

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

Subject	Course Number	Section Number	Course Title	Instructor	Load	Graded	Hours	Program	Grade
Fall 2023									
Elections as of: 06/06/2023									
LAW	453	001	Law and Philosophy Workshop	Ekow Yankah	2.00				
LAW	657	001	Enterprise Organization	Sarah Moss	4.00				
LAW	677	001	Federal Courts	Nicholas Howson	4.00				
LAW	679	001	Environmental Law and Policy	Gil Seinfeld	4.00				
				Nina Mendelson	4.00				



This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109-1215

Scott A. Hershovitz

Thomas G. and Mabel Long Professor of Law
Professor of Philosophy
Director, Law and Ethics Program

May 29, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in support of Benjamin Lehman's application to clerk in your chambers. Ben is an exceptional law student. He's smart, curious, and he works hard. He'll be a terrific clerk.

Lehman took my 1L torts class. And it was clear from the start that he was the top student in the class. He was sharp every time I called on him. But more than that, he asked sharp questions—questions that showed he had mastered the material and was thinking creatively about it. On a few occasions, his questions pushed my understanding of the law, and I had to consult with colleagues to find answers. I've been teaching torts for fifteen years. That doesn't happen often.

Lehman crushed the exam. He had the top score on all three sections. His raw grade was a 97; the second-highest grade was a distant 87. I can't remember a gap that large. As you might expect given that performance, his answers were exceptionally well-written. He offered a detailed analysis of every question, which aside from small details, could have served as an answer key. Indeed, I distributed Lehman's answers to students who wanted to review their exams; it was that well done.

Lehman earned an A+ in the course, of two on his transcript that semester. And he's done very well (though not quite that well) in subsequent semesters. Everything I've seen, in person and on Lehman's transcript, gives me confidence that he's got the tools to be an absolutely first-rate clerk.

Lehman is also friendly and unassuming. He's soft-spoken. He came to law school a little later than most, and approaches his work with the maturity of someone who's used to working. He'll be a delight to have in chamber, and he'll knock any assignment you give him out of the park.

If I was a judge, I'd hire Lehman in a heartbeat. I recommend him strongly.

Sincerely,

Scott A. Hershovitz

Scott Hershovitz - sahersh@umich.edu - 734-763-4923



U.S. Department of Justice

*United States Attorney
Northern District of Ohio*

Four Seagate, Suite 308
Toledo, Ohio 43604-2624

March 10, 2023

Dear Judge:

It is my pleasure to provide my personal and professional recommendation for Benjamin Lehman ("Ben"). I worked closely with Ben as an intern at the United States Attorney's Office for the Northern District of Ohio from June 2022 until August 2022. During that time, Ben researched and drafted substantive arguments for several criminal motions and a civil motion to dismiss an administrative appeal filed against the National Railway Adjustment Board. His written work product is excellent.

Ben is the Managing Executive Editor of the University of Michigan Journal of International Law and received a Certificate of Merit in his Torts and Civil Procedure classes. Ben's writing skills were immediately apparent while working with him. He was thorough, thoughtful, and open to suggestions as we edited multiple drafts of the motion to dismiss. He was not afraid to ask questions and get additional guidance when needed, but also took the initiative on his own to pursue legal theories and bring them to my attention.

During his time with our office, Ben was exposed to a variety of criminal cases and civil cases in the areas of affirmative and defensive litigation on behalf of the government. I am confident the experience Ben gained as a summer intern with my office, along with his high GPA and clinic experience, would make him the best candidate for a clerkship.

I highly recommend Ben Lehman for a clerkship; he is a very good writer, a hard worker, and would make a great asset to any office. Please feel free to contact me with additional questions at Angelita.Bridges@usdoj.gov or 419-259-6376.

Respectfully,

Angelita Cruz Bridges
Assistant United States Attorney

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109-1215

Daniel H. Halberstam
Eric Stein Collegiate Professor of Law
Director, European Legal Studies

May 29, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write in support of Benjamin Lehman, who has applied for a clerkship in your chambers. Ben is an extraordinarily sharp young lawyer with a quick analytic mind. I have no doubt he will make an excellent clerk in whatever chambers he joins.

Ben was a student in my EU class, in which we cover the constitutional structure, basic rights, and several foundational statutory provisions (such as core anti-discrimination laws) of the European Union. Our conversation often winds up being comparative, allowing students to draw on their existing knowledge of the corresponding law of the United States.

Ben stood out in our class conversations with his perceptive analysis of cases, demonstrating an extraordinary and at times astounding grasp of the material. Although he did not dominate the conversation, Ben was perhaps the single best discussant of the materials in class – indeed among the best I have seen in several years. Ben would quickly follow through obscure legal arguments, and easily recognize evasive maneuvers along the way. His spot-on critique would often make me smile.

Ben's understanding of the materials carried through on the exam, where he wrote one of the top two submissions. His writing was consistently clear, identifying hidden issues, and providing persuasive analysis of the various problems. He easily earned an A for his performance in the course.

In temperament, Ben is a rather soft-spoken person who brightens up when rigorously discussing challenging materials. He would be excellent not only at producing the written work needed from a clerk, but also at talking through the various legal arguments of a given case with his colleagues. He will surely be an asset to the chambers he joins.

In summary, I recommend Ben to you most highly and without qualification. Please do not hesitate to reach out with any questions you may have.

Yours Sincerely,

Daniel H. Halberstam

Daniel Halberstam - dhalber@umich.edu - 734-763-4408

Benjamin Lehman

3085 Wolverine Drive, Ann Arbor, MI 48108

734-395-0319 • benjamle@umich.edu

This writing sample is my portion of my first round brief for the 2022-2023 Campbell Moot Court Competition. The question we were assigned to argue was the constitutionality of Administrative Law Judges assessing punitive damages, both under the 7th Amendment and as a potential infringement of executive power. My partner wrote the 7th Amendment section, while I wrote the bulk of the introduction and conclusion, as well as the executive power section. I have removed my partner's sections, so the attached work is entirely my own and has not been edited based on feedback from anyone else, including my partner.

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IN THE

Supreme Court of the United States

No. 22-0096

H. B. SUTHERLAND BANK, N.A.,
Petitioner,

v.

CONSUMER FINANCIAL PROTECTION BUREAU,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TWELFTH CIRCUIT

BRIEF FOR RESPONDENT

24
Counsel of Record

RESPONDENT

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STATEMENT OF THE CASE**A. Introduction**

Petitioner Sutherland Bank (hereinafter “Petitioner”) is appealing from an unfavorable 2021 Final Order in a Consumer Finance Protection Bureau (CFPB) adjudication proceeding. H. B. Sutherland Bank, N.A. v. CFPB, 505 F.4th 1, 2 (12th Cir. 2022). In support of its appeal, Petitioner puts forward two arguments. First, Petitioner argues that the damages and penalties assessed against it violated its Seventh Amendment right to a jury trial. U.S. Const. amend. VII. Second, it alleges that the Bureau’s use of an Administrative Law Judge (ALJ) to conduct the initial proceedings and render a Recommended Decision violates the constitutional mandate that the President take care that the laws be faithfully executed. U.S. Const. art. II § 3, cl.4. It claims that the ALJ is impermissibly insulated by two layers of for-cause removal, similar to the Oversight Board that the Court rejected in Free Enterprise Fund. Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477 (2010).

Both of Petitioner’s claims must fail. [My partner’s summary of her argument on the Seventh Amendment claim was here]. The second claim also fails for three reasons. First, ALJs do not wield *executive* power, which is the type that implicates the President’s ability to fulfill his mandate. Free Enter. Fund, 561 U.S. at 495. Second, the ALJ in the CFPB makes no final decisions, but “possesses purely recommendatory powers”, a reason the Court explicitly gave for not extending its decision to ALJs in Free Enterprise Fund. Free Enter. Fund, 561 U.S. at 507, n.10. Lastly, the ALJ at issue in this case is not actually insulated by two layers of for-cause removal, but only one, like the Independent Counsel structure that this Court upheld in Morrison v. Olson. Morrison v. Olson, 487 U.S. 654, 686 (1988).

Since 1946, ALJs have performed their adjudicatory function subject only to removal for “good cause”. Administrative Procedure Act of 1946 Pub. L. No. 79-404 §11. The current structure

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of review by the Merit Systems Protection Board (MSPB) dates to 1978. Civil Service Reform Act of 1978. Pub. L. No. 95-454 §202. Petitioner asks this Court to drastically restructure the entire adjudicative process and overturn a system that has delivered efficient, impartial results for over forty years. In contrast, Respondent requests simply that this Court reaffirm the distinction that it identified in Free Enterprise Fund between policy-making executive officers and adjudicatory officials. By doing so, this Court will maintain the administrability of the regulatory system.

B. Statement of Facts

Petitioner is a nationwide bank, providing retail banking and other financial services to over 11 million customers. Sutherland, 505 F.4th at 2-3. Petitioner advertised their accounts as having no fees and told customers they were not being assessed fees. Id. at 5. However, all accounts were enrolled in Petitioner's APP service, which assesses fees for any overdraft. Id. Petitioner continued to advertise their accounts as no-fee for more than two years after the first consumer complaint about overdraft fees. Id.

In 2019, the CFPB initiated proceedings against Petitioner claiming that Petitioner's conduct violated the Electronic Fund Transfer Act (EFTA), 15 U.S.C. §§ 1693-1693r, the Consumer Finance Protection Act (CFPA), 12 U.S.C. §§ 5531(a), (d)(1), 5536(a)(1)(B), and the Fair Credit Reporting Act (FCRA) 15 U.S.C. §§ 1681-1681x. Id. at 4. Following Oral Arguments, the ALJ issued a Recommended Decision finding for the Bureau on all counts, recommending that Petitioner be held liable for over eight million dollars of damages to consumers for its violations, as well as that it be assessed civil penalties. Id. In 2020, the Thandiwe Pierson, the Director of the CFPB, issued a Final Decision, confirming the ALJ's ruling. Id. at 5.

C. Procedural History

Petitioner has consistently alleged that the CFPB violated its Seventh Amendment right to a jury trial. Id. at 2. Petitioner also claims that the Bureau's structure, under which ALJs may only

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be removed for cause by a board whose members are also only removable for cause, prevents the President from taking care that the laws be faithfully executed and is therefore unconstitutional. Id. Following Director Pierson’s decision, Petitioner filed a motion with the Director for a stay on the Final Order and Decision, which was denied. Id. at 5. Petitioner filed a timely petition with the 12th Circuit to set aside the Final Order and Decision. A divided panel ruled in favor of the Bureau on both counts. Id. at 5-6. Petitioner was granted a rehearing en banc by the full Circuit Court. Id. at 6. The full 12th Circuit also rejected both of Petitioner’s Constitutional claims in August of 2022. Petitioner then filed a petition for writ of certiorari to the Supreme Court of the United States, which was granted.

DISCUSSION

I. CFPB ADMINISTRATIVE LAW JUDGES’ FOR-CAUSE REMOVAL PROTECTIONS DO NOT IMPINGE ON THE PRESIDENT’S CAPACITY TO CONTROL THE EXECUTIVE AUTHORITY

The Supreme Court has determined that ALJs are “inferior officers” for the purposes of Article II, Section 2 of the Constitution. Lucia v. SEC, 138 S. Ct. 2044, 2049 (2018). Under the terms of the Appointments Clause, Congress may “vest the Appointment of such inferior Officers” in, among other positions “the Courts of Law.” U.S. Const. art. II § 2, cl. 2. The Constitution thus is open to inferior officers being appointed by parties outside of the executive branch, and it is in that context that the CFPB’s removal system should be analyzed.

The Supreme Court has established that a “‘good cause’ standard for removal by itself” does not unduly impinge on executive authority. Morrison v. Olson, 487 U.S. 654, 691 (1988); U.S. v. Perkins, 116 U.S. 483, 485 (1886). In Free Enterprise Fund, however, the Supreme Court held that two levels of protected tenure could not separate “the President from an officer exercising executive power.” Free Enter. Fund, 561 U.S. at 495. This ruling does not apply and should not be extended to the ALJ in this case for three reasons. First, ALJs as a general matter wield

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adjudicatory power, not executive or policy-making power. Second, the ALJ in the CFPB does not exercise any kind of final decision-making power. Finally, while the establishment of good cause is determined by an independent body, the decision to remove a CFPB ALJ for cause is vested in the Commissioner, who is removable at will, so there is only one layer of good-cause removal in the system at issue.

A. Administrative Law Judges Perform an Adjudicatory, not Executive or Policy-Making Role

ALJs are fundamentally different from other executive branch officers. In contrast to the Board that was at issue in Free Enterprise Fund, ALJs neither create new rules nor do they enforce existing ones. Free Enter. Fund, 561 U.S. at 486. They “cannot initiate investigations or commence a ... case.” Decker Coal Co. v. Pehringer, 8 F.4th 1123, 1133 (9th Cir. 2021). Rather, they “perform only adjudicative functions” as then-judge Kavanaugh described in his dissent when Free Enterprise Fund was before the D.C. Circuit. Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 537 F.3d 667, 699 n. 8 (D.C. Cir. 2008) (Kavanaugh J., dissenting) aff’d in part, rev’d in part and remanded, 561 U.S. 477 (2010); see also Sutherland, 505 F. 4th at 17. It is for these reasons that the Court explicitly held stated that the holding in Free Enterprise Fund “does not address ...administrative law judges.” Free Enter. Fund, 561 U.S. at 507 n.10.

Because ALJs are supposed to serve as “impartial adjudicators”, insulating them from excessive interference by political actors is critical to maintaining the “actual and perceived integrity of [their] proceedings.” Sutherland, 505 F.4th at 17; cf. Fed. Mar. Comm’n v. S.C. State Ports Auth., 535 U.S. 743, 758 (2002) (stating that “the role of the ALJ, the impartial officer designated to hear a case ... is similar to that of an Article III judge.”)

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B. Even if some ALJs Perform an Executive Function, the CFPB ALJ Does Not Make Final Decisions, and Therefore Does Not Wield Substantial Executive Authority

The ALJs in the CFPB do not make any final decisions. Rather, they simply produce a “Recommended Decision.” Petitioner in this case did file an appeal of the decision to the Director, but §1081.402 provides that even in the absence of such an appeal the Director of the CFPB will “either issue a final decision and order . . . , or order further briefing.” 12 C.F.R. §1081.402 (2022). As Judge Kavanaugh noted, “it is logical to assume that even *for-cause* executive officers . . . still might be considered ‘directed and supervised’ if a superior other than the President has statutory authority to prevent and affirmatively command . . . all significant exercises of executive authority by the officer.” Free Enter. Fund, 537 F.3d at 708. Since every decision made by the ALJ must be reviewed by the Director, who has full discretion to modify it, the ALJ wields no actual executive or policy-making power. This is in sharp contrast to “committing substantial executive authority” to an officer, which is what the Court struck down in Free Enterprise Fund. Free Enter. Fund, 561 U.S. at 505.

The ability of the CFPB Director to perform the analysis “as if the Director had made the preliminary findings and conclusions, i.e. *de novo*” contrasts with the authority of the reviewing authorities in other contexts. Sutherland, 505 F.4th at 17 (internal quotations omitted). The Department of Labor’s Benefits Review Boards (BRBs), who, like the CFPB director, are removable at will, “cannot reweigh the evidence” from hearings performed by ALJs, only reviewing findings of fact for “substantial evidence.” Decker Coal Co., 8 F.4th at 1134. None the less, the Ninth Circuit has upheld the identical structure of ALJs subject to *for-cause* removal by the same protected Merit Systems Protection Board (MSPB). They did so because “ALJs are judges who make decisions that are subject to vacatur by people without tenure protection.” Decker

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Coal Co., 8 F.4th at 1135. The ALJ in the CFPB makes decisions that are not only subject to vacatur, but to full “de novo” review.

C. The CFPB ALJ is Only Behind One Layer of Good-Cause Removal

In Free Enterprise Fund, the Court contrasted the Attorney General as “an officer directly responsible to the president” with the Commissioners, “none of whom is subject to the President’s direct control.” Free Enter. Fund, 561 U.S. at 495. Like the Attorney General, the CFPB Director is directly responsible to the president and “removable at will”. Seila L. LLC v. CFPB, 140 S. Ct. 2183, 2192 (2020). Like the Attorney General in Morrison, the Director of the CFPB “retains the power to remove the counsel for ‘good cause,’” Morrison, 487 U.S. at 696. This contrasts with the situation the 5th Circuit faced in Jarkesy, where the SEC Commissioners who could remove the ALJ for good cause were themselves only removable for cause. Jarkesy v. SEC, 34 F.4th 446, 464 (5th Cir. 2022). The Merit Systems Protection Board (MSPB) is responsible for determining if good cause exists for taking action against an ALJ, but it is “the agency in which the administrative law judge is employed” that takes the action. 5 U.S.C. § 7521(a). It is the Director’s decision, not the MSPB, whether to take action against the ALJ. The MSPB functions as an adjudicatory review board, similar to the District Court for the District of Columbia in the structure approved in Morrison. Morrison, 487 U.S. at 663. In short, because the ALJ “may be terminated for ‘good cause’, the Executive”, through the Director, “retains ample authority” to assure that the ALJ “is competently performing his or her statutory responsibilities.” Morrison, 487 U.S. at 692.

§ 7521 moves the finding of cause by an independent panel to before the agency action rather than leaving it for after-the-fact review, but this does not change the fundamental structure. In both Morrison and this case, an executive official, removable at will, may choose to terminate the inferior officer for good cause, subject to review by an independent authority. The president has more authority over the MSPB than the Article III court that performed the review in Morrison,

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so this process impinges on the President's power to enforce the laws less than the Independent Counsel there. Furthermore, as discussed above, the ALJ performs a less quintessentially executive function than the Special Counsel did.

CONCLUSION

Petitioner asks this Court to dismantle a core part of our nation's regulatory apparatuses. Respondent, however, merely asks the Court to confirm two simple legal standards. First, that the Seventh Amendment right to a jury trial is not implicated by the CFPB's assessment of civil penalties. Second, that the ALJ in the CFPB is not shielded by a dual layer good-cause removal system in a way that impermissibly curtails the President's capacity to execute the laws of this country. We therefore respectfully request the Court to affirm the holding below and maintain the effective and administrable balance the democratic branches have established.

Applicant Details

First Name	Alexandra
Last Name	Li
Citizenship Status	U. S. Citizen
Email Address	aml404@georgetown.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>460 New York Ave NW Unit 904</div> <div>City</div> <div>Washington</div> <div>State/Territory</div> <div>District of Columbia</div> <div>Zip</div> <div>20001</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	9259896589

Applicant Education

BA/BS From	University of Illinois-Urbana-Champaign
Date of BA/BS	May 2017
JD/LLB From	Georgetown University Law Center
	https://www.nalplawschools.org/employer_profile?FormID=961
Date of JD/LLB	May 1, 2024
Class Rank	School does not rank
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	Appellate Advocacy Division, Barristers' Council

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Professional Organization

Organizations	National Asian Pacific American Bar Association
---------------	--

Recommenders

Teitelbaum, Joshua
jct48@law.georgetown.edu
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Nourse, Victoria
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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Alexandra M. Li

460 New York Ave NW, Washington, DC 20001 | (925) 989-6589 | aml404@georgetown.edu

June 8, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Jackson:

I am a rising third year student at Georgetown University Law Center and I am writing to apply for a clerkship with your chambers for the 2024-2025 term.

I am a first-generation high school, college, and expected law school graduate in my family. Growing up as a queer woman of color and a child of working-class immigrant parents equipped me with diverse perspectives, and a desire to serve marginalized communities. During my first year of law school, I volunteered at weekly clinics in homeless shelters through the Homeless Legal Assistance Project. At Cadwalader, I helped a pro bono asylum client through the naturalization process. Currently, I am serving a pro bono client seeking defensive political asylum in a removal proceeding at Davis Polk. At Georgetown, I serve on the executive board of APALSA and work to increase networking opportunities for AAPI students, many of whom are also first-generation law students. After I retire from practice, I plan to become a law professor to mentor and invest in the next generation of lawyers, especially those who are historically underrepresented in the legal profession.

I have continuously sought out opportunities to hone my legal writing and advocacy skills in law school. I was awarded Best Brief at the William E. Leahy Moot Court Competition. As a member of the Appellate Advocacy Division of Barristers' Council, I will also coach second year students representing Georgetown Law in competitions next year. I am an incoming student attorney in Georgetown's Appellate Litigation Clinic, where I intend to challenge myself in becoming a better advocate by briefing and, if warranted, arguing on behalf of pro se litigants before the Fourth, Eleventh, and D.C. Circuits. Finally, I will continue to serve as a Research Assistant to Professor Victoria Nourse, whose scholarship focuses on statutory interpretation and civil rights.

Clerking for your chambers is my ideal choice. I aspire to become a litigator specializing in complex litigation and I would love the opportunity to observe decision making in the chambers, and effective advocacy in the court room. Externing for Judge Lafferty of the Bankruptcy Court for the Norther District of California helped me realize that clerking is an excellent way to serve the public, which is an important education and career goal of mine. Finally, clerking for your chambers would create an opportunity to develop a mentor relationship with you that continues throughout my career. I believe our shared passion for the public will materialize from lessons into actions that will make me a better lawyer.

Enclosed please find my resume, a writing sample, my transcript, and my recommendations from Professors Victoria Nourse, Joshua Teitelbaum, and Diann Rust-Tierney. I look forward to hearing from you soon. Thank you for your time and consideration.

Respectfully,

Alexandra M. Li

ALEXANDRA M. LI

460 New York Ave NW, Washington, D.C. 20001 • (925) 989-6589 • aml404@georgetown.edu

EDUCATION**GEORGETOWN UNIVERSITY LAW CENTER****Washington, DC***Juris Doctor*, GPA: 3.87

Expected May 2024

Honors: Barristers' Council Appellate Advocacy Division 2022 William E. Leahy Moot Court Competition Best Brief Award

Clinic: Appellate Litigation Clinic (Aug. 2023 – May 2024)

Activities: APALSA Executive Board, Professional Chair (Private Sector); OUTLaw; Georgetown Law Softball

ARIZONA STATE UNIVERSITY, SANDRA DAY O'CONNOR COLLEGE OF LAW**Phoenix, AZ**

First-year J.D. coursework completed, GPA: 3.98

2021 – 2022

Honors: CALI Award for Contracts, Willard H. Pedrick Scholar

Activities: OUTLaw, APALSA, Homeless Legal Assistance Project

UNIVERSITY OF ILLINOIS, URBANA CHAMPAIGN**Champaign, IL****Bachelor of Science, Finance; Bachelor of Science, Information Systems & Information Technology****May 2017**

Activities: Phi Mu Fraternity, Director of Parents & Alumni Relations; Mercer, Summer Consulting Intern (2015)

EXPERIENCE**DAVIS POLK WARDWELL LLP****Washington, DC****Summer Associate****May 2023 – Present**

- Analyzed pending criminal prosecutions of employer non-solicitation agreements as per se antitrust violations; briefed supervising associates on client's potential exposure to criminal liability.
- Researched and summarized preliminary antitrust exposure for client's pending acquisition.

GEORGETOWN UNIVERSITY LAW CENTER**Washington, DC****Research Assistant for Victoria Nourse****Sept. 2022 - Present**

- Analyzed and compiled data for an empirical analysis of textual conflicts, textual application, and interpretive principles for Supreme Court merits opinions for the 2020 and 2021 terms.
- Researched and wrote memorandum on Title VI private right of action in higher education; analyzed potential legal attacks against affinity groups under Title VI in lieu of pending Supreme Court decisions on affirmative action.

UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF CALIFORNIA**Oakland, CA****Judicial Extern to Hon. William J. Lafferty III****July 2022 – Aug. 2022**

- Researched and penned memorandum outlining facts and legal conclusions as to whether a § 362 stay violation occurred in an adversary proceeding arising out of a dismissed Chapter 13 bankruptcy case.
- Researched and briefed Judge Lafferty on the Ninth Circuit's interpretations of Domestic Support Obligation priority under Bankruptcy Code § 507, and non-dischargeability exceptions in Chapter 13 bankruptcy cases.

CADWALADER, WICKERSHAM & TAFT LLP**Washington, DC****Summer Associate, Diversity Fellow****May 2022 – July 2022**

- Researched and wrote memoranda on affirmative behavioral injunctive relief in antitrust tying cases, as well as second Circuit case law regarding preclusion of witness testimonies on the basis of late disclosure.
- Researched discretionary factors for asylum immigration; revised asylum letter; conducted mock naturalization interviews with pro bono client.
- Researched and drafted memorandum on potential individual liability of corporate recidivists under new Consumer Financial Protection Bureau (CFPB) leadership and policies.

CISCO MERAKI**San Francisco, CA****Business Intelligence Analyst****Dec. 2018 – Oct. 2020**

- Conducted Request-For-Quotes (RFQs) with overseas contract manufacturers, and negotiated costs for new products.
- Created new streamlined processes for return of products that generated up to \$10 million financial savings.
- Reconciled quarterly costs of 117 products with contract manufacturers and component vendors.

POST HOLDINGS, INC.**Emeryville, CA****Master Data and ERP Business Analyst****June 2018 – Nov. 2018**

- Built codes assessing data quality within existing databases; analyzed root causes of abnormal system changes and errors.

UNIQUITY RETIREMENT + SAVINGS**San Francisco, CA****Accountant****Feb. 2018 – June 2018**

- Assisted in financial modelling project to forecast 5-year growth; organized and presented analytical findings.

LANGUAGES AND INTERESTS

- Mandarin (proficient), Teochew (proficient), Cantonese (basic proficiency).
- Poetry, water coloring, cooking, yoga, UFC Women's Strawweight.

Arizona State University

Unofficial Transcript

Page 1 of 1

Name: Alexandra Mingsi Li
 Student ID: 1222572884

Print Date: 06/09/2023
 External Degrees
 University of Illinois Urbana-Champaign
 Bachelor of Science 05/01/2017

Beginning of Law Record

2021 Fall

Course	Description	Attempted	Earned	Grade	Points	
LAW 515	Contracts	4.000	4.000	A+	17.332	Laura Coordes
LAW 517	Torts	4.000	4.000	A	16.000	Abigail Jones
LAW 518	Civil Procedure	4.000	4.000	A	16.000	Robert Miller
LAW 519	Legal Method and Writing	3.000	3.000	A	12.000	Amy Langenfeld
		<u>Attempted</u>	<u>Earned</u>		<u>Points</u>	
Term GPA:	4.09	Term Totals	15.000		15.000	61.332
Cum GPA:	4.09	Cum Totals	15.000		15.000	61.332

2022 Spring

Course	Description	Attempted	Earned	Grade	Points	
LAW 516	Criminal Law	3.000	3.000	A-	11.001	Erik Luna
LAW 522	Constitutional Law	3.000	3.000	A-	11.001	Ilan Wurman
LAW 523	Property	4.000	4.000	A	16.000	Karen Bradshaw
LAW 524	Legal Advocacy	2.000	2.000	A	8.000	Andrew Carter
LAW 638	Professional Responsibility	3.000	3.000	A	12.000	Abigail Jones
		<u>Attempted</u>	<u>Earned</u>		<u>Points</u>	
Term GPA:	3.87	Term Totals	15.000		15.000	58.002
Cum GPA:	3.98	Cum Totals	30.000		30.000	119.334

END OF TRANSCRIPT

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Alexandra M. Li
GUID: 841613850

Course Level: Juris Doctor

Transfer Credit:

Arizona State University
 School Total: 30.00

Entering Program:

Georgetown University Law Center
 Juris Doctor
 Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
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----- Fall 2022 -----							
LAWJ	038	08	Antitrust Law: A Survey from the Sherman Act of 1890 to Today's Progressive Movement	3.00	A	12.00	

LAWJ	1098	05	Howard Shelanski Complex Litigation	4.00	A-	14.68	
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LAWJ	165	02	Maria Glover Evidence	4.00	A-	14.68	
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LAWJ	1777	08	Michael Pardo Human Rights Advocacy: Lessons from the Campaign to End the Death Penalty & other Humn Rts Campaigns	2.00	A-	7.34	
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Diann Rust-Tierney

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	48.70	3.75
Cumulative	43.00	13.00	48.70	3.75

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
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----- Spring 2023 -----							
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LAWJ	025	05	Administrative Law	3.00	A	12.00	David Hyman
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LAWJ	1107	08	Analytical Methods	3.00	A	12.00	Joshua Teitelbaum
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LAWJ	1686	05	White Collar Criminal Practice: International Scandal Investigations	1.00	P	0.00	Frances DeLaurentis, Ronald Coleman
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LAWJ	215	08	Constitutional Law II: Individual Rights and Liberties	4.00	A	16.00	Louis Michael Seidman
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LAWJ	268	05	Remedies in Business Litigation	3.00	A	12.00	John Taurman
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LAWJ	882	09	International Commercial Arbitration	1.00	P	0.00	Louis Kimmelman
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----- Transcript Totals -----							
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	EHrs	QHrs	QPts	GPA
Current	15.00	13.00	52.00	4.00
Annual	28.00	26.00	100.70	3.87
Cumulative	58.00	26.00	100.70	3.87

----- End of Juris Doctor Record -----							
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Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

This is a letter of recommendation for Alexandra Li in support of her application for a judicial clerkship.

I am the David Belding Professor of Law at Georgetown University Law Center. I am also Professor of Economics (by courtesy) in the Department of Economics at Georgetown University. Before coming to Georgetown, I clerked for Judge Richard M. Berman of the U.S. District Court for the Southern District of New York, practiced law at Cahill Gordon & Reindel in New York, and was a Visiting Assistant Professor at Cornell Law School. I hold a J.D. from Harvard Law School and a Ph.D. in Economics from Cornell University.

I have come to know Alexandra Li in the past six months because she was a student in my course, Analytical Methods. The objective of the course is to enhance students' ability to give sound legal advice and make effective legal arguments by introducing them to selected concepts and methods from economics and statistics that are relevant to numerous areas of law and legal practice. Grades are based on a midterm examination and a final examination. The students are also responsible for working on daily problems that we discuss together in class. This gives the students an opportunity to actively work with the course material throughout the semester, and it gives me the opportunity to see in real time how the students are doing with the material.

Alexandra was a stand-out student in the course. Her performance on the midterm and final examinations were very good, to be sure. But what made Alexandra truly stand out were her exceptionally valuable contributions to our classroom discussions. Perhaps more than any other law student that I have taught since coming to Georgetown in 2009, Alexandra consistently and formidably challenged the economic and statistical approaches to the law that I teach in Analytical Methods. Her comments and questions were intelligent and insightful and reflected a great academic curiosity for the subject matter, a trait that in my opinion characterizes the best students in any course. Her classroom interventions, and the thoughtful discussions that they often precipitated, greatly enriched the experience and learning of her fellow students—as well as my own. It was true delight to have Alexandra in my course.

Alexandra's outstanding performance in my course is hardly surprising. She is an extremely accomplished law student, having earned a near-perfect grade point average at Arizona State before transferring to Georgetown where she has continued to excel. Alexandra is clearly on a glide path to graduating from law school with distinction and becoming an excellent attorney. From what I understand, Alexandra wants to practice as a litigator after clerking, ideally doing plaintiff-side work, and has the long-term goal of becoming a law professor. I have no doubt that Alexandra will accomplish whatever professional goals she sets for herself.

At the same time, Alexandra's academic achievements are rather astonishing. She grew up in a low-income household as a daughter of immigrant parents. She is a first-generation college graduate and a queer woman of color. While Alexandra may be on a glide path to success now, she has had to overcome many disadvantages and obstacles to get on her current path.

In my personal interactions with Alexandra, including numerous conversations after class and during my office hours, I have found her to be a very personable and mature young woman. She appears to be well grounded and well adjusted to the rigors of life as a law student. I imagine that it would be very enjoyable and rewarding to have Alexandra in chambers.

In summary, based on her performance in my course, her overall academic performance in law school, and her personal qualities, I believe that Alexandra would excel as judicial clerk and I recommend her highly and without reservation.

Yours truly,

Joshua C. Teitelbaum
David Belding Professor of Law

Joshua Teitelbaum - jct48@law.georgetown.edu - 202 661-6589

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write this letter of recommendation on behalf of Alexandra M. Li, Georgetown Law '24, who has applied to you for a clerkship. Alexandra is an excellent writer. Her high academic performance is further enhanced by the careful and insightful approach that she applies to difficult questions.

Alexandra was one of fifteen students participating in my fall 2022 seminar on human rights advocacy. During the semester, students examined a range of legal issues; policy considerations and professional ethics questions that arise in the context of the law and human rights advocacy. Because the group was small, I was able to get to know each of the students and their strengths and abilities quite well.

Alexandra asked questions in class that refined our thinking and analysis. She is a skilled researcher. In small group activities, I observed Alexandra often move discussions forward, referencing a point of law that she had researched for the group.

I was especially impressed by the sophisticated connections that Alexandra made between the topics being discussed in class and her experience in other courses and outside the classroom. For example, Alexandra shared reflections gleaned from her externship with Hon. William J. Lafferty III on the United States Bankruptcy Court for the Northern District of California. Alexandra's comments demonstrated a sophisticated understanding of the law and procedure and a practical understanding of the real-world impact of decisions being made in bankruptcy court. Her comments reflected a commitment to enhancing the quality of justice and the larger aspiration for true equality under the law.

Alexandra's final paper and class presentation were outstanding. She created a plan to provide pro bono and low bono access to counsel for individuals seeking to discharge their debts in bankruptcy court.

Her presentation and paper included a thorough discussion of the limited protection afforded to, often the most financially vulnerable people, seeking relief from the bankruptcy court. She discussed "the downstream" impact of these limited protections on the judicial system itself. Alexandra proposed a practical solution to the problem: encouraging more law schools to develop clinical programs that would provide student representation in bankruptcy courts.

Alexandra made excellent use of my office hours. She asked clarifying questions about assignments and solicited feedback on her performance in class. During those times as well, Alexandra shared her life experiences which have shaped her personal mission and desire to study and work in the legal profession.

Alexandra is accomplished in three languages, Mandarin, Teochew, Cantonese in addition to English. She is the daughter of first-generation immigrants. She tells a particularly poignant story about how her mother's hope of attending high school was crushed because she lacked the money and because she was a girl. This story left an indelible impression on Alexandra and caused her to appreciate the importance of education and self-determination regardless of income, gender, and identity. She doesn't take her education or her opportunity to work in a field about which she is passionate for granted. She is motivated to serve and to be a part of a legal profession that strives to provide basic fairness for all.

Alexandra is highly motivated. I was impressed by the range of professional activities she has undertaken. Just to highlight a few of Alexandra's activities: Alexandra is an incoming summer Associate with Davis Polk Wardwell LLP for the summer of 2023. She will be representing pro se clients through the Appellate Litigation Clinic in the 2023-2024 academic year. She will be serving on the APALSA Executive Board. She is Professional Chair, Private Sector with APALSA. She will be coaching incoming 2L students in moot court competition in the Barristers' Counsel Appellate Advocacy Division and she is a member of OutLaw. These activities demonstrate Alexandra's interest in a range of important legal issues and the practice of law – all of which will contribute to her success as a law clerk and benefit her professional development.

Alexandra has received numerous awards throughout her law school career including: the 2022 William F. Leahy Moot Court Competition Best Brief Award, the CALI Award for Contracts and the Willard H. Pedrick Scholar honor. Alexandra's would be an excellent law clerk. She has the necessary skills, breadth of experience during her law school career and demonstrated capacity to be successful. She is intellectually curious, self-motivated, and passionate about the law and the law's capacity to bring about justice. I have no doubt that Alexandra would make an extraordinary contribution to the court.

Alexandra's personal story is not only a testament to her strong abilities but demonstrates that she brings an important perspective and understanding to the law – a perspective that facilitates fairness in the law because our understanding of the law

Diann Rust-Tierney - dr967@georgetown.edu - (703) 201-1958

is informed by an understanding of the widest range of people and experiences coming before the law.

I predict Alexandra Li will be a stellar law clerk, and that she will pay forward every investment made in her. Alexandra Li has my highest recommendation, and I am a strong supporter of her application. I would be happy to discuss her work further at any time.

Thank you for considering her candidacy.

Very truly yours,

Diann Rust-Tierney

Diann Rust-Tierney - dr967@georgetown.edu - (703) 201-1958

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

With great enthusiasm, I write to recommend Alexandra Li (Alex) as a clerk in your chambers.

Alex sits close to the top ten percent of her class, and in a very large class as ours (550+), that is an extraordinary achievement. She was awarded "Best Brief" in our premier Leahy Moot Court competition. She is summering at Davis, Polk, Wardwell and, while working there, has continued to help me on various projects. Her hopes are to continue in litigation and work on complex multi-district cases. She is a first-generation student who grew up in a family where English was not spoken. She interned for a judge her first year summer, and found it to be a "wonderful" experience (her words).

I first met Alex when she volunteered to work on a major empirical project on statutory and constitutional interpretation. The work required rigor in coding and the capacity to understand conceptual nuance. I was particularly attracted to Alex's resume because she had an undergraduate degree in finance and computer science. I knew she would not shy from numbers. Alex was always prompt in replying to my emails and was happy to spend hours on zoom walking through each number (I'm a bit of a perfectionist), and whether it was accurate given the conceptual boundaries of our coding. We worked seamlessly together and she worked very well with my other assistants. Alex is eager to please, generous with her time, and quite mature for her relative youth.

Finally, Alex's background shows that she has drive and grit, two qualities essential for the best clerks and lawyers. Because her parents did not speak English at home, she taught herself the language through reading. She became her family's translator, accompanying her parents to doctor's appointments, government agencies, and banks. She has seen first-hand the difficulties of navigating the legal world, and she hopes to learn how to better serve the public. And, despite all the difficulties, and need for endless scholarships, she has pushed herself to excel.

In my experience, Alex has the temperament, intellectual capacity and drive to excel as a clerk. I recommend him to you without reservation.

Sincerely,

Victoria Nourse
Ralph V. Whitworth Professor of Law
Executive Director, Center for Congressional Studies

Victoria Nourse - vfn@law.georgetown.edu

ALEXANDRA M. LI

460 New York Ave NW, Washington, D.C. 20001 | (925) 989-6589 | aml404@georgetown.edu

WRITING SAMPLE

The attached writing sample is a brief submitted for the 2023 Federal Bar Association Thurgood Marshall Memorial Moot Court Competition. This is a brief for Respondents, two former felons challenging a state re-enfranchisement statute under the Equal Protection Clause of the Fourteenth Amendment and the Twenty-Fourth Amendment. The statute at issue requires “violent” felons to pay off all financial obligations related to their convictions before registering to vote. There is no equivalent obligation for “non-violent” felons. There is no other alternative to regain voting rights lost after felony convictions in the State of Marshall. Respondents and other indigent “violent” felons challenged the statute for depriving them re-enfranchisement on the basis of wealth.

This sample is my independent work. It omits the Table of Contents, Table of Authorities, Statement of Questions Presented, Statement of Jurisdiction, and the Twenty Fourth Amendment issue authored by my moot court partner. Applicable Supreme Court precedents apply a two-factor test to determine review standards for wealth classifications. Section I of the Argument analyzes the constitutionality of the challenged statute under strict scrutiny, and Section II analyzes the statute under rational basis review.

Team Number 2

No. 21-2089

IN THE SUPREME COURT OF THE UNITED STATES

ALLWRIGHT, ET AL.

Petitioners

v.

STOLL, ET AL.

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Counsel of Record

Alexandra M. Li

STATEMENT OF FACTS

2021 marked the watershed for re-enfranchisement of former felons in the State of Marshall. Previously, a felon in Marshall would be deprived of the right to vote upon conviction, with no avenue to regain such right. J.A. 1. A felon who knowingly voted in any election committed a third-degree felony, punishable by a fine up to \$5,000 and/or a term of imprisonment up to five years. *Id.* at 2. In 2021, an overwhelming change in public opinion prompted the state legislature to pass Marshall House Bill 576 (“H.B. 576”). *Id.* H.B. 576 amends Marshall Stat. Ann. § 67-91 to permit former felons to vote in federal, state, and local elections, but only if they meet the Bill’s requirements. J.A. 1. Marshall Stat. Ann. § 67-91 (2022).

Under H.B. 576, all felons must have “completed all terms of any imposed sentence, including any period of imprisonment, parole, probation, or supervised release of any sort,” and submit to the State Board of Elections a notarized affidavit, a valid and complete application to register to vote, and a \$50 processing fee. J.A. 5. These requirements, applicable to all felons, constitute the initial proposed bill passed by the Committee. *Id.* at 3. During House floor debates, Representative Dave Snider proposed an amendment to the initial bill, later codified as Marshall Stat. Ann. § 67-91(C)(2). *Id.* § 67-91(C)(2) imposes an additional financial obligation on felons convicted of “violent” crimes, defined as felonies with “an element of the use, attempted use, or threatened use of physical force against the person of another.” *Id.* at 5. § 67-91. A violent felon must also have “completed or resolved all financial obligations, including any payment of restitution, fines, fees, or court costs, that are related to the conviction” to be eligible to vote. § 67-91(C). There is no equivalent obligation for “non-violent” felons. *Id.* § 67-91 is the only way for a convicted felon to regain the right to vote in the State of Marshall. J.A. 5. The law will take effect in time for the 2024 elections. *Id.* at 1.

During the floor debate, Representative Dave Snider expressed concerns that some constituents would accuse the legislature of “being soft on crime” if the initial bill were enacted. *Id.* at 3. He proposed adding § 67-91(C)(2) as a solution. *Id.* In his words, § 67-91(C)(2) makes violent felons “pay nickel and dime” and “jump through every single hoop” in order to regain the right to vote. *Id.* Conceding that making former felons pay did not have much to do with being tough on crime, Snider pointed out that § 67-91(C)(2) would nevertheless, give legislature “cover” from political backlash. *Id.* Representative Pinkerton objected to the amendment. *Id.* at 4. She reasoned that “even [Representative Snider] seems to recognize that [the amendment] makes no sense. . . What does a felon’s ability to pay their court costs have to do with whether they should get the vote back? . . . All this is going to do is create uncertainty and prevent poor people from voting.” *Id.* Four other representatives voiced their agreement with Representative Pinkerton. *Id.* § 67-91(C)(2) passed by a single vote.¹ *Id.*

Some former felons, namely, those convicted in Marshall state courts, can look up their outstanding financial obligations on a free central lookup website set up by the state. *Id.* at 6. The website does not provide information to felons convicted of crimes in federal or non-Marshall state courts. *Id.* Of the 500,000 felons living in Marshall who have completed their imposed sentences, 79% owe some form of financial obligations and 68% were indigent at the time of their trial. *Id.* Neither does the website classify felonies as “violent” or “non-violent.” *Id.* 80% of felons and former felons are convicted of Marshall crimes with no binding precedent interpreting whether the felony is “violent” as defined by § 67-91. *Id.* Former felons convicted of undisputedly “violent” felonies are 15 times more likely to be indigent post-release than former felons convicted of “white-collar”, or non-violent offenses. *Id.*

¹ The amendment passed 75 to 74, with one abstention in the House. J.A. 4.

Respondents Michael Stoll and Kelly Porter are former felons who hope to regain their right to vote under H.B. 576. *Id.* at 7. Mr. Stoll was convicted for having served as a getaway driver in an armed robbery. *Id.* This is a felony conviction and he is therefore subject to § 67-91(C)(2)'s financial obligations. *Id.* at 5, 7. Mr. Stoll has completed his term of imprisonment and probation, and is excluded from voting solely due to his indigency. *Id.* at 7. He is unable to pay either the \$1,200 in outstanding financial obligations related to his conviction, or the \$50 processing fee. *Id.* at 7. Ms. Porter is a former felon convicted of wire fraud. *Id.* She has completed all terms of her imposed sentence, with \$200,000 in outstanding restitution. *Id.* Respondents filed suit in the District Court of Marshall, challenging § 67-91(C)(2) and § 67-91's requirement to pay a processing fee. *Id.* at 1. The District Court of Marshall granted summary judgment for Appellants on February 22, 2022, and the Thirteenth Circuit reversed on appeal on July 1, 2022. *Id.* at 10, 16. This Court granted certiorari on November 4, 2022.

ARGUMENT

I. Under strict scrutiny, Marshall Stat. Ann. § 67-91(C)(2) violates Equal Protection because it impermissibly discriminates on the basis of wealth.

This Court should strike down § 67-91(C)(2) because it fails strict scrutiny. Unlike *Jones*, financial obligations related to convictions are *not* a part of felons' sentences in Marshall. *Jones v. Governor of Fla.*, 975 F.3d 1016, 1026 (11d Cir. 2020). § 67-91. Therefore, § 67-91(C)(2) creates two classes of felons: those who have completed their imposed sentences and are able to pay their financial obligations, and those who have completed their imposed sentences but unable to pay. Because voting rights are unavailable to the latter due to their indigency, § 67-91(C)(2) creates a class that discriminates on wealth in the availability of voting rights.

There are two requirements to apply strict scrutiny to wealth classifications: 1) that the class discriminated against is completely unable to pay for a desired benefit; and 2) that as a result,

the class is absolutely deprived of the opportunity to enjoy said benefit. *Harper v. Va. Bd. of Elections*, 383 U.S. 667, 668 (1966). *Bearden v. Ga.*, 461 U.S. 660, 667 (1983). *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973). Here, § 67-91(C)(2) satisfies both requirements. Stoll is indigent and completely unable to pay his outstanding financial obligations. As a result, Stoll is completely deprived of the right to vote because § 67-91(C) is the only avenue of re-enfranchisement for felons in Marshall. J.A. 5. It follows that this Court should apply strict scrutiny to § 67-91(C)(2). As conceded by the State of Marshall at oral argument, § 67-91(C)(2) fails strict scrutiny and violates the Equal Protection Clause. J.A. 13.

A. § 67-91(C)(2) creates a class that discriminates on the basis of wealth, not the completion of imposed sentences.

The district court erred in concluding that the statute at issue does not discriminate on wealth. J.A. 8. The court compared the provision at issue to “an analogous Florida law” in *Jones*, which was in fact crucially different. *Id.* § 67-91(C)(2) discriminates on wealth for two reasons: financial obligations are not part of the imposed sentences, and felons cannot reasonably ascertain whether they must pay off financial obligations before voting. § 67-91.

The textual distinction of the two statutes shows that § 67-91(C)(2) discriminates on wealth. The *Jones* statute defines imposed sentences to encompass “imprisonment, probation, restitution, fines, fees, and costs.” 975 F.3d at 1026. For convicted felons who have not paid their restitution, fines, fees, and costs, failure to complete their imposed sentences, not wealth, bars their eligibility to vote. *Id.* at 1030 (“The only classification at issue is between felons who have completed all terms of their sentences, including financial terms, and those who have not. This classification does not turn on membership in a suspect class.”).

However, the same conclusion does not follow here because § 67-91(C)(2) does not define financial obligations as part of the imposed sentence. § 67-91(C). Violent felons in Marshall are

eligible to vote on two conditions:

- (1) completed all terms of any imposed sentence, including any period of imprisonment, parole, probation, or supervised release of any sort; *and*
- (2) completed or resolved all financial obligations, including any payment of restitution, fines, fees, or court costs, that are related to the conviction in compliance with the court order setting the obligations.

§ 67-91(C).

Resolving financial obligations is not a part of completing imposed sentences, but rather a distinct and separate requirement altogether. *Id.* This distinction is meaningful because the two statutes create different classes. The *Jones* statute divides convicted felons into classes of those who have completed their imposed sentences, and those who have not. 975 F.3d at 1030. Here, however, § 67-91(C)(2) divides convicted felons into classes of those who have completed their sentences and can afford to pay, and those who have completed their sentences but cannot afford to pay their financial obligations. § 67-91(C)(2) creates an indigent class that does not exist under the *Jones* statute. Among felons who have completed their imposed sentences, § 67-91(C)(2) bars only the indigent from voting, while granting voting rights to those who can afford to pay. The district court erred in finding no wealth classification.

Aside from the statutory text, § 67-91(C)(2) also burdens the indigent because it is unreasonably difficult to determine one's obligations under the statute. This directly undercuts the district court's conclusion that the statute discriminates on the nature of conviction. J.A. 8. Felons in Marshall, violent or non-violent alike, cannot reasonably ascertain whether they have to pay their financial obligations before voting. To begin, felons convicted in a non-Marshall state court, or a federal court, have no access to the website tracking their outstanding financial obligations. *Id.* Although felons convicted in Marshall state courts *could* look up the website for outstanding balances, there is no information on whether users are violent or non-violent felons. *Id.* To put this

lack of clarity in perspective, 80% of felons were convicted of felonies with no binding precedent interpreting whether they are “violent” under § 67-91. J.A. 6. Furthermore, an ineligible felon who knowingly votes in an election could be prosecuted for “a felony in the third degree, punishable by a fine of no more than \$5,000 and/or a term of imprisonment not exceeding 5 years.” J.A. 2.

The lack of notice, combined with the steep price of violation, present a Hobson’s choice to an overwhelming majority of felons. Monied felons could simply pay off their financial obligations and avoid the risk of prosecution, in the event they did commit violent felonies. However, indigent felons, violent or non-violent alike, are much more likely to not vote: they cannot afford to pay if they are indeed violent felons. The uncertainty and vagueness of the current scheme also falls heavily on indigents, who possess few resources and struggle with subsistence.

§ 67-91(C)(2) thus burdens indigent felons, regardless of the nature of felonies convicted. It discriminates on the basis of wealth, not the completion of imposed sentences.

B. This Court should apply strict scrutiny to § 67-91(C)(2) because it satisfies the *Rodriguez* factors requisite for the enumerated exception.

This Court should apply strict scrutiny to § 67-91(C)(2). While rational basis typically applies to wealth classifications, § 67-91(C)(2) fits squarely within the exception for strict scrutiny.

The *Harper/Bearden* exception applies strict scrutiny to Equal Protection inquiries of wealth classifications. *Harper*, 383 U.S. at 668. *Bearden*, 461 U.S. at 667. In *Harper*, the Court struck down a state constitutional provision that preconditioned voting on the payment of a \$1.50 poll tax. 383 U.S. at 670. The Court concluded that “a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.” *Id.* at 666. The *Harper* Court explained that wealth classifications are subject to strict scrutiny because “[w]ealth, like race, creed, or color, is not germane to one’s ability to participate intelligently in the electoral process.” *Id.* at 668. The *Bearden* Court held that a

sentencing court cannot revoke a defendant's probation for his inability to pay fines and restitution. 461 U.S. at 667. The Court again stated that Equal Protection inquiries of wealth classifications "cannot be resolved by resort to easy slogans or pigeonhole analysis, but rather requires a careful inquiry. . . ." *Id.*

The Court subsequently applied strict scrutiny to a number of wealth classifications that barred indigents from having access to state-created rights. *Griffin v. Ill.*, 351 U.S. 12, 39 (1956) (invalidating state law that prevented indigent criminal defendants from obtaining a court transcript); *Williams v. Ill.*, 399 U.S. 235, 244 (1970) (striking down criminal penalties incarcerating indigent defendants who were unable to pay fines); *Bullock v. Carter*, 405 U.S. 134, 149 (1972) (invalidating election filing fee requirements for indigent candidates); *Douglas v. Cal.*, 372 U.S. 353, 366-67 (1963) (holding indigent defendants have a right to court-appointed counsel on direct appeal). *See also Gardner v. Cal.*, 393 U.S. 367 (1969); *Draper v. Wash.*, 372 U.S. 487 (1963); *Tate v. Short*, 401 U.S. 395 (1971). These cases, along with *Harper* and *Bearden*, create an exception in wealth classifications. Courts apply rational basis review to wealth classifications without more. *Dandridge v. Williams*, 397 U.S. 471, 483 (1970). Certain wealth classifications that fall within the *Harper/Bearden* exception are, however, subject to strict scrutiny. *Harper*, 383 U.S. at 668. *Bearden*, 461 U.S. at 667.

This Court should extend the exception and apply strict scrutiny here. Under *Rodriguez*, strict scrutiny applies to wealth classifications when the class of individuals discriminated against possesses "two distinguishing characters." *Rodriguez*, 411 U.S. at 20 (1973). Plaintiffs must be "completely unable to pay" due to their indigency. *Id.* And as a consequence of their inability to pay, plaintiffs must be absolutely deprived of the enjoyment of a desired benefit. *Id.* Both characteristics are satisfied here.

In *Rodriguez*, the Court sustained an Equal Protection challenge against a state funding program. *Id.* at 62. The program funded public schools pro rata with the size of property tax revenues in each school district. *Id.* at 9-10. The plaintiffs were school children residing in school districts with lower property values, and they alleged wealth discrimination. *Id.* at 4-5. The *Rodriguez* Court declined to extend the *Harper/Bearden* exceptions because neither characteristic was satisfied. *Id.* at 55. The Court explained that while there were wealth disparities between school districts, not all of the poorest students lived in the poorest districts. *Id.* at 23. So even though plaintiffs were *relatively* poor compared to the advantaged class, they were not “completely unable to pay.” *Id.* *Rodriguez* was therefore distinct from cases within the *Harper/Bearden* exception, where the disadvantaged classes were “composed only of persons who were totally unable to pay the demanded sum.” *Id.* at 22. (“Those cases do not touch on the question whether Equal Protection is denied to persons with relatively less money on whom designated fines impose heavier burdens.”). Additionally, while the plaintiffs were perhaps receiving education of lesser quality, they were not absolutely deprived of public education. *Id.* at 23-24. Similarly, cases within the exceptions, i.e., *Griffin*, *Gardner*, *Draper*, *Douglas*, *Williams*, and *Tate* involved plaintiffs who, due to their indigency, had no other reasonable alternatives to access court transcripts, obtain legal representation, or pay fines. *Rodriguez*, 411 U.S. at 21-22.

In the present case, both the *Rodriguez* characteristics are satisfied. Like *Griffin*, *Gardner*, *Draper*, *Douglas*, *Williams*, and *Tate*, the Plaintiff class here consists “only of persons who were totally unable to pay the demanded sum,” and they have no reasonable alternatives to re-enfranchisement. *Id.* at 22. Stoll is indigent and completely unable to pay \$1,200 of outstanding financial obligation. J.A. 6. He brought this case on behalf on himself, and hundreds of thousands of indigent felons barred from voting. *Id.* The district court found that out of more than 500,000